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DECISIONS

IN THE

HIGH COURT OF ADMIRALTY.

DECISIONS

IN THE

HIGH COURT OF ADMIRALTY;

DURING THE TIME OF

SIR GEORGE HAY,

AND OF

SIR JAMES MARRIOTT,

LATE JUDGES OF THAT COURT.

VOL. I.

Michaelmas Term, 1776, *to Hilary Term*, 1779.

LONDON:

PRINTED FOR R. BUTTERSTAFF, CORNER OF ESSEX-STREET, STRAND,

BY GEORGE COOKE, DUNSTAN'S HILL.

1801.

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PREFACE.

IT has been long complained that there are no public Reports of Decisions in the Court of Admiralty, or Ecclesiastical and Testamentary Courts among the civilians. Their jealousy of the common lawyers, and a concealment of what passes among the little knot of practitioners, seem to have occasioned that respectable and learned profession to be compared to the Talmudists among the Jews, who only dealt in oral traditions or secret writings. No persons were allowed to be professed practical conjurers but the Sanhedrim themselves. That complaint is now in part removed, and, as it is announced, will continue to be removing by a publication of Reports of Cases argued and determined in the High Court of Admiralty, commencing with the judgments of the Right Honorable Sir William Scott, Michaelmas Term, 1798. Those Reports,

may tend, with former precedents, to convince the world that the government of Great Britain has done and does justice in the fullest and most open manner to Neutrals in war, as well as to its own subjects. It is to be hoped that now the veil of the temple is drawn back, some advocate equally accurate with Dr. Robinson, will publish Reports of Cases adjudged in the Ecclesiastical and Testamentary Courts, and under judicial approbation and sanction. Severe remarks to their prejudice have fallen from persons who know little of those courts.

The printing these Decisions of the High Court of Admiralty, beginning Michaelmas 1776, previous to those of Sir William Scott, was at the desire and expence of Government; and if they are shorter and less in a popular style than those lately published, they had the same motive. No motive but one purely national occasioned these former Decisions

to

to have been ever committed to the Press. The Justification of the conduct and character of the British Government upon public and avowed principles, so as to gain that most powerful weight in the machine of human affairs, universal confidence, was the great object; to prevent, if possible, the ideas of Neutral Powers, founded on their own arbitrary modes of proceeding, from harassing the British Ministers personally with unreasonable complaints, and with demands upon them of doing that which was impossible in a limited Government, as it was unreasonable to do, and otherwise, from forming those Coalitions which, long foreseen, have now taken place, so as to render by such Coalitions, if possible, the Naval Power of Great Britain of little consequence; from giving the utmost assistance to a frequently defeated enemy under the pretence of Neutrality, and of protected carriers of the weakest Belligerent, and from prolonging the War. If this could be permitted, it is to no purpose that the maritime commerce,

wealth, and power of France seem almost annihilated, if, at the very moment of perishing, it shall be permitted to revive.

A British minister, of very high authority abroad in the last war, expressed himself in the most pointed language in one of his letters, that a Judge of the High Court of Admiralty of Great Britain must wipe away a notion which f reigners had adopted; that the court was composed of several men; that the judgments were according to the common law of England; that the court was but the little finger of the first lord commissioner of the Admiralty, or rather of the efficient minister; and that the Judge himself was removeable at his nod: but that the idea on the contrary should be impressed upon foreign governments, that a British Judge of the Admiralty was independent in a certain degree as much as the other Judges of England by the Bill of Rights, and amenable only like them to parliament; that

that he must have a spirit of doing equal justice, "*Tros Rutulusve*," as if he were the chosen umpire of every maritime country of the universe in *the first instance* of a litigated cause; appealable only to the superior tribunal of state. The words of the sentence are singular in the style of this court, "*Thrice calling upon* "*the name of Christ, and having the fear* "*of God alone before his eyes, the Judge* "*pronounces and decrees.*" This shews the original idea, that he might be a man of too pliant and practicable stuff; that he ought to be a man not actuated by personal views of ambition and avarice, and courting by a mean adulation for the purposes of the day the smiles of a superior, or the popularity of any set of men of any sort of profession; he should be withour narrowness of mind, or meanness of education. In short, a Judge ought to be a man intrepid. It has been suggested that the powers of a Judge of the High Court of Admiralty were too great to be entrusted to any one man;

man; but is it true that those powers are unconstitutional or unnecessary? Have they ever been abused? are they unlimited? Let all this be first proved. For the answer to one question we may refer to the decisions down to the period preceding the present administration of the national justice. To the second question, the jurisdiction *in primo limine* is limited by an appeal to the king and council. The lord chancellor of Great Britain is limited by appeal to the house of lords, although it finds him there as speaker. The lord chief justices are limited by writ of error to the same august tribunal. The powers vested in the sovereign, and in his minister, the delegate of authority, however great these powers are, they are constitutional; and, what is more, they are necessary. But putting all these powers into commission, and introducing republican despotism, and summary proceedings must destroy all confidence, both in British subjects and in foreign. If it could be supposed for

for a moment that justice were weighed in two different ballances, of personal interest and impartiality of judgment; that foreigners should even become judges of their own causes of prize; that justice should have only one eye in one place, but two or more in another; in a word, if this were so, the having a boot or a log for a judge would have answered best the interest and views of certain persons. What sort of men judges upon any benches have been, is best seen in British history. The faithful records of time when mankind became more civilized, enlightened, and free, will transmit their names to a disinterested and discerning posterity. Sir Julius Cæsar, in the reign of Queen Elizabeth, Sir Henry Vane, in that of Charles I. Sir Leoline Jenkins, who was also secretary of state, Sir Thomas and Dr. Exton, judges in that of Charles II. and Sir Charles Hedges, secretary of state in the reigns of William and Queen Anne, all stand forth as prominent characters to an impartial public. If any opinions rather leant

leant to answer the purpose of the moment, it is not to be wondered that any person possessed of the exercise of royal power wished to draw them to his own will and pleasure, and to have the sole and immediate direction of those scales in which right and wrong were to be weighed, and concerning which he ought to have been instructed, rather than peremptorily to dictate. The characters of James Duke of Yorke, lord high admiral, and of the king his brother, Charles II. need no comment. As to their successors, those judges whom we have known, or know personally, nothing need be said. The latest decisions in the first instance have found their way through the medium of the Press to the world: what will be the definitive determination rests with the Lords Commissioners of Appeals in the privy council.

In the war before last, the neutral agents in causes of prize, desirous, as it was natural, to enhance the merit of their own services, and every man to have his own

own activity, diligence, and sagacity taken notice of in preference to other agents, wrote to their correspondents abroad, that nothing could exceed the expensiveness and delays of the High Court of Admiralty; that no redress was to be obtained from the justice of that Court, nor equity of the British Government, but by force, or making all affairs of capture the subject of ministerial intervention and complaint, as between Sovereigns.

The practice was then (not so indulgent as since) to pronounce almost universally for just cause of seizure and expences, and for further pleading and proof on the part of the claimant. At all events the capture was a prize to practitioners. Neutrals were, if not driven to compromise, harassed, and the minds of men in the mercantile as well as the political world were inflamed. Pleadings were introduced against pleadings: expensive commissions were sent abroad to

examine witnesses, and the simplicity of the process of a Court of Admiralty, which particularly in causes of prize ought to be as summary as possible, and as the style is, *velo levato* (with full sail hoisted) was changed to the resemblance of the longtailed and encumbered proceedings of a Court of Chancery. France, distressed, found it her interest, instead of enforcing her own rigid ordonnances, to fling the carrying trade of all her domestic and colonial produce into the hands of Neutrals, and particularly of the Dutch, which nation had by treaty the especial privilege of free ship free goods, but which France now encouraged all the Northern maritime nations to arrogate to themselves as a matter of common right, as by a new law of nations: and that although each nation was bound by its own particular treaties, yet the sea ought to be considered as free an element as the air, and every man's ship as his own castle, and the national flag and pass as sufficient to protect a ship and cargo from being

being stopped, and particularly from being searched and brought in for adjudication. The British cruizers covered the ocean: the instructions of the British Government were peremptory, and scarcely a neutral ship left a neutral or enemy's port without having the property of French subjects on board openly, or covered. The activity of cruizers made them bold in a prædatory war: merchants of all nations interested directly or indirectly, were loud in their clamours to the ministers of their respective countries; all were animated with the desire of making themselves of consequence, or gaining some profit. The doctrine of "free ship, free goods," and treaties, were ill understood or overlooked. "Free ship, free goods," is a short pithy sentence; but the application is from misapprehension of the sense, or from taking for granted that the proposition is true universally; for all neutral ships are not free by the law and usage of nations, but only those that are privileged specifically by

by treaties; and nations, although pretending to be non-belligerents, must make themselves actual parties in war when they assist one of the belligerents. It can never be so much for their interest as to be simple carriers: What would be the fate of neutral waggons attempting to go through the lines and posts of a belligerent power? The British government was alarmed with a fear that all the Northern maritime powers would form a confederacy, and enforce a free commerce, which would render a naval war and ascendancy of the fleets and armaments of Great Britain not only of no avail, but even give a preponderancy to those of France. Our own merchants, particularly the insurers, felt with the enemies of England. The question was actually debated in the committee of the States General of Holland, whether they should not declare war against England. The forwardest of the foreign courts upon this occasion was that of Prussia, scarcely with a ship or a port, its

its flag was to be held up to protect the world.

The elector of Brandenburg had a personal dislike to the elector of Hanover and king of England. A low man, with as low establishment, was sent hither in a diplomatic character, to shew contempt, to affront, and complain. The common lawyers of England, who are the great counsellors of its government, but who knew little of the Admiralty Court and the law of nations, arrogated all power and knowledge to themselves, but were, when called upon, unable to answer the memorial of the Prussian minister, Mon^t. Michel. To Sir George Lee, the archbishop's Judge of the Prerogative Court, and Dr. Paul, the Advocate General of the king, two eminent civilians; were added two great common lawyers, the Attorney General, Sir Dudley Ryder, and the Solicitor General, Mr. Murray: who all of them drew up an answer and signed it. The latter, from the place of his birth,

birth, had a predilection for the imperial or civil law, which he quoted on many occasions, and piqued himself upon a superior knowledge: he took to himself the principal merit of this performance, which was ushered into the world with great eclat, and by high authority.

Notwithstanding all this, there is reason to believe, that the king of Prussia having threatened to invade Hanover, the whole matter was put to sleep by our Government privately restoring the value of the ships and cargoes, protected, as it was insisted, by the Prussian flag, although the property of enemies of England.

The pertinacity of the king of Prussia was unfortunately increased by Lord Grenville, favorite of King George II. and the great adviser of his councils, having used a lively expression, "that "he never heard of the flag of Berlin "before, and should as soon have expec-

"ted

" ted to have heard of the flag of Frank-
" fort."

The same notions of " free ship, free " goods," were again revived in the last war by the late Empress of Russia, not understanding them, and putting herself at the head of what was called the armed neutrality. One Carlo Beerens, a Livonian, merchant, lawyer, and politician, in a furious memorial informed the Empress, that he and others of her subjects were greatly obstructed in their commerce by the English cruizers; that England could not command a ball of packthread without her, and that she had nothing to do but to speak the word. The immense profit of the ballance of trade between Great Britain and Russia, was never stated or considered. To her resentment expressed too hastily on this occasion, the British government thought proper to submit, and a quantity of sail-cloth, sufficient to have fitted out the whole Spanish fleet from Ferrol and Cadiz,

was

was restored upon reversal of the decree of condemnation in consequence of an appeal, and the captor absolutely condemned in costs and damages. But the effect of the sentence in the first instance was the stopping the Spanish fleet. The idea of government was, that this great lady must not be put out of humour, and that in granting so much to the Russian flag for the moment, there was nothing very material granted in fact, because it was notorious that the Russians have but few merchant or carrier ships of their own, perhaps not half a dozen; and that the true doctrine of the law of nations is, *that the ship confers the privilege on the flag, and not the flag upon the ship;* and lastly with respect to the armed neutrality, Denmark, Sweden, &c. must be judged in cases of capture by their own separate and several treaties, as well as they would be guided by their own particular interests.

It is no matter of surprise that the lowest of mankind who have arrogated a name, too honourable for themselves, that of merchants, men who are the refugees of every country, bankrupts in property and reputation, and even traitors to the very government under which they were born, and have been and are protected, should be the low instruments of faction and hostile intrigues against it, wishing to advance themselves in wealth or consequence: it is no matter of surprise that men of very narrow ideas, such as masters and owners of ships, accustomed to mesquinerie, and the feelings only of little profits and losses, should see so little of their own greater interests, but that enlightened persons of education and reflection, sagacity and high rank in the cabinets of sovereign princes, whom they advise and direct, should not discover the attempts of little busy intriguers to blind and seduce them, by giving way to false representations, and run counter to the most solid interests of the sovereigns

whom they advise and of the nations whom they guide, *is* ASTONISHING. Sir Joseph Yorke, in one of his letters, calls the envoys of certain foreign states not ministers, but a harder name, humbly and ill-paid by their own government; better by the enemy as licensed spies: and their dispatches home filled with articles taken from the news-papers of faction. If ever a fact were well known and established it is, that the purchase of naval stores by the British government, the restitution of the ships, the payment of freights to the place of destination, and all reasonable demurrage allowed, was a most beneficial thing for neutral carriers. No credit being given by neutrals to the French government, for all cargoes laden on its account were paid for previously to lading or sailing, the carriers then sold these same cargoes to the British government upon capture and detention, and thus in fact derived the immense profit of cent. per cent. double freights, short trips instead of long voyages, &c. &c.

Notwith-

Notwithstanding all this, a privilege most systematical and problematical is now to be supported by blood; all these profits are to be put an end to, and the theory of French politics and philosophical liberty of the seas to be announced and supported. What a delirium must have seized those persons who govern the world! The masters and owners of ships almost in every neutral port, according to the Letters of Sir Joseph Yorke, were perfectly satisfied and even delighted. Nothing more could be asked or desired, and nobody was discontented but the Navy Board for their Contracts and Contractors, the Treasury felt for a very wise and political but great expenditure, and THE ENEMIES OF GREAT BRITAIN were the sufferers.

It could not be expected that the Commissioners of the Navy Board should be men of long and correct views: their ideas were the narrow ones of profit and loss of the immediate moment.

They accordingly addressed themselves not to their proper principals, the Board of Admiralty, of which they are but a subordinate and dependent branch, but to the Secretary of State for Foreign Affairs by two letters, one dated 29th September, 1779, the other on the 28th of October following. The Commissioners proposed, "as a method to avoid the expence of the long demurrage of neutral ships laden with naval stores, which upon *examination* they said they had found of too inferior a quality to be employed for the use of His Majesty's navy, and neither useful to us or the enemy; that the demurrage is a ground for complaint of neutral subjects and a great encrease of public expence:" and (that the expence might lose nothing in figure) they observed, "that according to the discount of navy bills for some time past, this expence was equal to 240,000*l.* That the valuation made by *their* officers amounted to no more than 135,000*l.*; and they proposed that they

" they should be furnished with speci-
" fications of the cargoes of all neutral
" store-ships, *before the Court of Admiralty*
" *takes any notice of them*, and that *they*
" may have an *option* to purchase *accord-*
" *ing to circumstances.*" The answer to this attempt of the Navy Board setting themselves up for independence was very obvious.

That the assuming the jurisdiction *in primo limine* of the High Court of Admiralty was unconstitutional; contrary to the Instructions of His Majesty to his cruizers, who were to bring in all their prizes and proceed regularly; that freights, demurrage, and costs were to be settled by two eminent unobjectionable merchants, named by the Judge, and in the presence of his Registrar: that every difficulty was proposed to be flung upon the King's ministers, the captors and the claimants, the latter of whom had pledged to them the Royal word by the declaration of the Earl of Suffolk of the 19th October,

tober, 1778, that in all cases of stores *bona fide* laden before the notification of the war, and no prevarication or frauds of either oral or instrumental evidence, reasonable demurrage was to be allowed.

If the Navy Board and their officers were to have their option to purchase or reject any sort of naval stores, let it be asked, who were to have paid the expences of seizure, detention, and demurrage, or was the innocent neutral to take away ship and goods at an immoderate loss? Not a rope, a spar or a board but was useful, contrary to the untrue suggestion of the Navy Board to either His Majesty to this nation, or its enemies. It is well known who and what British merchants had contracts for naval stores at Petersburgh, and other Ports in the Baltic, for the French arsenals and government: and if at last neutral foreigners were induced to yield to the temptation of England and France out-bidding each other, and brought smaller naval stores

in

in the way of British cruizers, it was no policy to reject them, under the invidious name of rubbish. A great man, so purblind as to read every paper with pain, found it easier to make a blustering speech or raise a laugh by a joke than to take trouble to be informed of the necessities of a nation which he had then plunged into a war, which has changed and is likely to change more and more every day the face of the universe by its consequences. "If neutrals were to im-" port punch and his puppet-show, were " they to be bought?" "Yes: and no-" body so proper to show the puppets as " himself," was the answer. This island was to be the dépot of all the naval produce of the North: he was ashamed. The Navy Board was repelled; and all the honest neutrals highly gratified. Our high allies, the masters and owners of ships and cargoes, were to be subsidized by the most ample justice being done to them: the credit and integrity of this country

was

was to be raised to the utmost pitch of honour, and our restless enemies both at home and abroad to be reduced by the want of more arms to lay down those they had in their hands, and thus leave the world in safety and repose.

The insular position of Great Britain and Ireland, crossing the line of navigation of the Northern nations, a narrow channel dividing these islands from the Continent give to the British empire the means of commanding the surrounding seas: and to its Western squadrons, passing across in two divisions one one way, the other the other, every power of self-defence and offence, and of controuling the commercial world.

To prevent as much as possible the bad effects of this new doctrine of "free ship, "free goods," under which it would be impossible for the British nation to carry on a naval war, it was judged proper by Govern-

Government that as soon as any decree of restitution, or of condemnation, or further proof should be pronounced in the Court of Admiralty, it should be published in one of the common papers, which should be most impartial and popular, and that a number of impressions from the very same press should be taken off, and sent immediately to the British ministers at all the neutral maritime courts, so that they might be masters both of the facts and the reasonings, and ready to give an answer to the complaints of those courts before any misrepresentations should find their way from heated or interested persons in this or in any other country whatsoever. By this publicity, a confederation of all the Northern neutral powers was, for that time prevented, and the most active and furious agent of the Dutch claimants, in his correspondence was contradicted and repressed, so that he was actually driven from his agency.

Before this period, (1779), the Mémoire

moire Justificatif de la Conduite de la Grande Bretagne, en arrêtant les Navires Neutres, was drawn up by the then Advocate general*. A man of eminence in Holland, could not help owning to Sir Joseph Yorke, the British minister at the Hague, who circulated the Mémoire by order of the then government, and to the grand Pensionary, the latter of whom, said it was damned strong, that it was damned true. It paved the way, and laid a foundation for better sentiments; if it were possible to satisfy commercial people, but that seems impossible.

The French revolutionary government had no sooner got rid of the regal, than they seemed to be determined to change every thing; so that there might be a new language and a new set of ideas among mankind, until all the old ones should be forgotten. That this alteration did not proceed from the frivolousness of the French character, merely, is very apparent. The policy

* Sir James Marriott. This has lately been reprinted, and is sold by R. Bickerstaff, Strand.

policy is obvious, and it can be very little doubted what order of men have been and are at the bottom of this revolution, when we recollect under the monarchical government and influence of the House of Bourbon the republic of a religious society. A republic independent of all other political, commercial, and religious associations it certainly was, and consisted of more than 20,000 members of the first learning and abilities, following the institute of a military founder and madman, scattered either openly or in various disguises in all courts, and over the whole face of the globe. The epithet of the French republic sufficiently marks its genius and origin, and to be taken from ecclesiastical language and doctrines, "One and indivisible."

Among other innovations, nothing speaks more clearly the scheme and views of the new legislators to revolutionize the whole world, to pull down the old constituted authorities, and to draw all power to themselves, (in fact

acknowledging their own weakness) than by prompting neutral powers to come forward and act in open defiance not only to their own treaties, but the usages and established law of nations. The stopping, searching, and seizing the ships and properties of neutral nations upon the high and open seas, has always been a matter of great delicacy, debate, and agitation. But to what tribunal could the party who complains of the injury fly but to arms, and to appeal to heaven, if there were no interposition of a maritime jurisdiction of the aggressor? Courts of Admiralty were therefore set up in all civilized maritime countries, where both the subject and the foreigner might apply for redress, with an appeal to the sovereign power of the state, whose cruizers and subjects are supposed to have been guilty of infractions, either of the general law of nations, or of their own laws and instructions. This jurisdiction was of necessity: and where the property was, in that place and country only could the judgment be.

It

It is singular that in the patent of the Judge of the High Court of Admiralty, there is no particular jurisdiction of prize of war or reprisal expressedly given. From this circumstance an argument has been raised upon the insinuation of facts of delay, of impracticability of temper, and of want of experience of forms in a substitute. The power of substitution was given by all the former patents under the great seal to the Judge, who is certainly the best judge of the character of his own substitutes in his own court; The regular order of seniority could only influence him. A Substitution, only as temporary, was intended, and not to take place constantly and in any great case, except with information and advice, *ad referendum*: much also was said, more than was true, on the subject of ill health, and the impossibility of going on with business, so that with an omission of acquiring proper information, a distinct commission for judgment of prize was directed to be instantly prepared, without the least communication to the party of

too

too high rank and character to be treated with disrespect.

The attornies and practitioners of any other court who should dare, without presenting their complaints to their own judge, to proceed to libel that judge, would never be permitted in a court of chancery or of common law without the utmost indignation. A memorial was secretly obtained to be signed and presented with many false complaints, which came not only from practitioners who were eager to oblige their clients, the neutral claimants, but they arrogated to themselves, as it were, the sole direction of all causes, and approbation and disapprobation of persons, both Judges and Substitutes. Foreign claimants were taught by some persons to suppose their proctors to be both Advocates and Judge. No wonder if complaints of expences were and are encouraged, and the cry of excessive charges echoed and re-echoed by Foreign ministers and merchants, when public entertainments were given by certain persons

persons to the maritime corps diplomatique and the agents and masters of neutral ships. Foreign consuls and vice consuls had assumed on the French principles a diplomatique character and privileges, denied to them formerly in M. de Passow's* case, by the whole body of the then foreign ministers. Foreign consuls have since thrust themselves into very lucrative agencies; acting in a double capacity; have been eager for commissions of appraisement and sale, and pressed for further time or further proof of title and documents, at the same time laying their own profitable prolongation of suits at the door of the Judge; enhancing the number of causes, (notwithstanding lists were ordered to be hung up publicly in court), by saying, most equivocally, "that no causes were heard which were not finally heard;" and as if among those causes there were not a prodigious number appealed from the Vice Admiralty Courts abroad, to the infinitely harassing his Majesty's ministers and the commissioners of appeals

* The Danish Consul.

peals in the privy council; and as if no time were to be allowed for production of the necessary evidence and papers, by a very small body of men who attend and practise in many other courts, as well as in the High Court of Admiralty.

In term-time, the courts at Doctors' Commons with the by-week (only unobserved in the short interval of Easter term) make sessions of five weeks; there are five courts in a week, in which many causes of great length and importance, testamentary, matrimonial, and ecclesiastical, are heard.

In periods of our history, when the fashion of putting all the great officers of the crown in commission was not introduced, as at the Revolution, the lord high admiral devolved his authority to his lieutenant under his own great seal; and there is not a single instance in the history of our laws where the judgment of prize of war or reprisals was not exercised by his lieutenant according to the usage of

of such exercise, which usage was by the common law of the land; and the law of nations. It appears from Rymer's Fœdera, that in no special commission in any case of reprisal was his lieutenant ever omitted to be named *Quorum unus*. What has since followed by putting the lord high admiral's authority, as well as that of almost all other great officers of the crown, into commission, is well known; and thus every board has become a little republic, and an *imperium in imperio*. Where the concentration and power now rests is obvious; Supposing, therefore, that the power of judging of prize of war and reprisal in peace rests in the crown, delegated by it and by the constitution to the lord high admiral, and by him to his lieutenant, in the same way as all judicial powers in the crown are delegated to the king's judges, by virtue of the commission of the great seal, of which the lord high chancellor is the keeper, and subject to no alteration or removal, otherwise than by the act of parliament called the Bill of Rights, it is

certain that the judgment of prize is put in motion by the prize-act, and given to all Courts of Admiralty, the same being duly authorised: and this act of the whole legislature exactly corresponds with the existing treaties of the crown with all maritime states, who refer by especial articles of treaties the claims of themselves and their subjects to this jurisdiction; and if the court exceeds its jurisdiction, it is the business of the common law, paramount to all others, to limit by prohibition.

The omission of all regular proceedings for the discovering truth, and doing substantial justice, is assuredly wrong, under a popular idea of avoiding expences, thought to be excessive, by commissions which let foreigners in to be judges in their own causes of complaint: but which in the regular course are always open to correction when complaint is made to the judge, and are to be examined by him and his registrar.

The

The case of the Oester Ems has been reported with inaccuracy. It made a most material part of that case, (but no notice is taken of it,) that it came to the High Court of Admiralty for decision, in consequence *of the consent and request of all parties.* Assuredly nothing more can be wanting to establish a jurisdiction. The lord warden of the cinque ports who claimed the droit, and was in possession of the treasure, his judge who became an advocate, the Prussian master himself who set up the demand of privilege, all prayed to be heard by the High Court of Admiralty, rather than by the Court of the Cinque Ports. The proctor who was defeated in the latter claim, was advised to appeal to the commissioners of appeal in council. They were of opinion against the lord warden: pronounced for the appeal, and reversed the sentence of which Lord North was in possession in the court below, and assumed and exercised themselves, by reversal, that very jurisdiction against which they pronounced. A common lawyer

was the mouth of the council, and refused saying to what other jurisdiction the cause belonged. The party, being 30,000l. at least the loser, sat down patiently, and never thought (or thought very little) of a prohibition to the court of appeal: however, it has been said, from pretty good authority, that the affair was compromised; whether before or after the final decree, is not clear. Omissions and additions are not much to be wondered at when we know who furnish the materials and for what purpose. It is a common saying among all the pleaders of the long robe, "A bad precedent is worth two good ones."

It is to be hoped that the final decision of the case of the St. Jago (that case had in it very particular circumstances and features) will never be quoted in the way it has been. Its policy and its justice have been doubted by some people. The history of it will probably one day or other be better known to the whole world. It would have answered every wise

wise purpose of government if an eighth, instead of a tenth, agreed for by Lord St. Helens, (which latter was much less than is given by act of parliament to British recaptors) had been decreed instantly to the recaptors, and so much of the decree below confirmed, and the rest suspended and deferred for further consideration. Alliance and friendship with the court of Spain would not have been so readily broken; a knowledge of what each party had in their hands, (the Court of Spain had immense sums of British property), and what each could constitutionally do, would have been obtained.

Too many of the common law reports, in general so celebrated for lengthening and adorning arguments by an affectation of much study and learning, and that sort of reading never to be read, as well as for justifying one wrong judgment by another, and giving the appearance of justice to injustice, are chiefly the productions of illiterate clerks who misunderstand, and which

which mark the low characters of the writers who perpetuate "much bad reasoning in much bad language." All arguments upon precedent deserve little to be relied upon. False principles or false consequences are to be found in many reports, and only shew how much mankind are disposed to pervert justice under the appearance and pretence of doing it.

It is by the principle, and not by the precedent of the decree, matters should be adjudged: "*Non exemplis sed legibus judicandum est.*" *l.* 13. *cod. et inter.* 1. *omn. Judic.—Licet is qui provinciæ præ est omnium Romæ magistratuum vice et officiis fungi debeat, non tamen spectandum est quid Romæ factum est, quam quid Romæ fieri debeat. l.* 12. *Dig. de Officio Præsidentis.* One should suppose that justice was one of the simplest ideas in nature, but how complicated must it appear when we travel from the *tractatus tractatuum* down to the latest publications on all sorts of law? Little ought to be our surprise, when we find that German and Dutch

"*mag-*

"*magnificent*" professors as they call themselves, and who in general are only schoolmasters, are the numerous and principal writers on the laws ecclesiastical, civil, and of nature, and of nations. A Bynkershoek, a Huberus, a Vattel, a Hubner, a Schlegel, a Busch, a Heineccius, a Grotius, or Pufendorf are men who have written to serve a particular private personal, or otherwise some public political purpose. Had the wife of Grotius published her opinion upon some certain subjects, said a reader of lectures upon the Roman and civil law in one of our own universities, she would have been of a different opinion. It is well known that in the foreign universities that whosoever takes a degree (and degrees are mostly taken in Law) print and publish Theses which they make or are made for them. Nothing can be more ridiculous, when it is as notorious that a thesis may be bought, as well as burghers briefs and false passes, for one or a few rix-dollars, than to see such things dressed up with all the professorial pedantry of learning, and the authors as theatrically antiquated

antiquated as if they appeared in trunk hose, jackboots, slashed doublets, great slouched hats and feathers, ruffs or bands. Well might a late fighting and writing monarch exclaim, "*O droit de gens, comment ton etude est inutile,*" to which at the same time all sovereign princes appeal, and almost all violate it, as if they wished to be judged and approved by the rational and humane part of mankind at the very moment they are guilty of sophistry, cruelty, and deceit, and shew how much they despise all other human beings over whom only a providential birth and generation have placed them.

From this reflection, must be excepted the Sovereign of this country, as the most equitable upon earth, and who may well say, what was once said by a monarch of France, "That if truth and justice fled from all the rest of the world, they ought to find a refuge in the breast of princes."

DECISIONS

DECISIONS

IN THE

High Court of Admiralty.

2 Seſſ. *Michaelmas* Term, 1776.

The DICKENSON, *William Merton*, Maſter.

CARGO: flour, candles, wax, ſtaves, belonging to the Rebels of North-America, calling themſelves the Continental Congreſs.

Ship: property of Bayard, Jackſon and Co. of Philadelphia.

Voyage: ſailed February 16, 1776, from Philadelphia, bound to Nantz in France, and from thence intended back to Philadelphia.

On March 30, in the voyage to Nantz, the maſter having opened his inſtructions at ſea, that they were to load back with ammunition and warlike ſtores; Sands the mate, and the reſt of the crew, being acquainted by him with ſuch inſtructions, reſolve to

take the command from the maſter, *and take poſſeſſion of the ſhip and cargo in his Majeſty's name.*

They accordingly do ſo, and ſign a reſolution, and on April 7, arrived at the port of Briſtol, notwithſtanding offers made by the maſter to induce them to perform the original voyage, for a reward of ſix months pay extraordinary.

In Kingroad they are hailed by the merchantmen, and the King's tender the Roſe, "from whence?" anſwered "from Philadelphia."

At a place called Pill, the Surveyor and officers of the Cuſtoms came on board; Surveyor puts two Tide-waiters on board, and adviſes Sands to ſet off for Briſtol and deliver up his papers to the Collector.

He goes up half a mile higher, and then leaves the ſhip in the charge of the ſecond Mate and Tide-waiters on board. After the ſhip had been moored head and ſtern at Briſtol-quay an hour, the Lieutenant of the tender came on board to make a ſeizure of the ſhip and cargo.

She remained afterwards in the care of the crew, with the Tide-waiters on board, and a perſon left by the Lieutenant.

All

All the material papers were brought in to prove the property of the ſhip and cargo, and the reſt accounted for, being left (as ſaid in the affidavit of Sands) in the hands of Lord North, not being proper to be divulged.

Parties in the cauſe, claiming the ſhip and cargo to be condemned to them,

1. The King's Procurator General appearing for William Chamberlain, Eſq; as his Majeſty's nominee by warrant under the King's ſign manual, in his office of Treaſury, as for a forfeiture to his Majeſty, and receivable in his Exchequer, againſt all parties.

2. Mr. Luſhington for Anthony Metherel, Lieutenant of the Roſe tender, claiming the forfeiture under the act of Parliament, and his Majeſty's Proclamation as captor.

3. Mr. Goſtling, Procurator for the King in his office of Admiralty, as for a droit and perquiſite of Admiralty, being taken by perſons having no commiſſion from his Majeſty, claimed the ſhip and cargo in oppoſition to the King's warrant, and the intereſts of Lieutenant Metherel.

The Judge of the Admiralty had upon a former court day pronounced the ſhip and goods "to have belonged to inhabi-"tants of the rebellious Colonies in Ame-"rica, and as ſuch or otherwiſe liable to "confiſcation, and condemned the ſame as "lawful prize, reſerved to whom the ſame "of *right belongs*." Commiſſioners were named on each ſide to appraiſe and ſell the ſame.

All facts being agreed, the cauſe came on upon the merits.

Dr. Harris, Advocate of the Admiralty, inſiſted that the right of beginning was with him, and that the act (or expoſitions of facts for the information of the court) was theirs.

The King's Advocate inſiſted that the act was as much one Proctor as another; that the ſtile was "upon *petition* of both *Proctors*."

But that in a cauſe where the King is intereſted, his own Advocate has the right of preaudience every where; but if the Judge thought otherwiſe, he ſhould be obliged to ſubmit, and ſat down.

Dr. Harris then acquieſced; and the King's Advocate, at the aſſent of the Judge, roſe

roſe again and opened the cauſe. The King's Advocate then threw out, that from every rule of decorum, and the reſpect due to his Majeſty's warrant under his ſign manual, he hoped the inferior officers of the Crown and of a ſubordinate board, did not come there to oppoſe it without alſo having a proper authority from the Lords of the Admiralty. That it was no light matter for inferior officers of the Crown to act of their own heads, and oppoſe the King's warrant and ſign manual. That at ſuch a criſis of public confuſion, and in queſtions of ſuch a delicate nature, he thought it right to have his own juſtification, and ſhould be always jealous of Sollicitors of Boards and Proctors taking upon themſelves to act as they thought proper in the King's cauſes. That ſubordination muſt be maintained, or every thing would be in compleat confuſion. That his Majeſty, by the conſtitution, did nothing but by order in ſome Board, and counterſigned by its Commiſſioners.

To this Mr. Seddon, the Sollicitor of the Admiralty, and his Deputy Mr. Dyſon, who were preſent, made no reply; but Mr. Goſtling, junior, the Proctor of the Admiralty,

ralty, ſaid, he had no orders from the Lords of the Admiralty to proceed, but received his inſtructions from the Sollicitor; and that there was a letter from Mr. Stephens, Secretary of the Admiralty.

The Judge ſaid he did not underſtand theſe warrants from the Treaſury board. Such matters wanted no authorization to be proceeded in; for that the King's Proctor on one ſide, and the Proctor of the Admiralty on the other, might appear as they pleaſed, and it was to be ſuppoſed always by the court, that they are well warranted in what they do?

Obſ. It is uſual and neceſſary in many caſes of common ſuits, for the Proctor of a party to have a ſpecial proxy, under the hand of his principal employers, to do certain acts of moment in the Eccleſiaſtical and Admiralty courts; but the Judge not thinking ſuch authority neceſſary *here* only ſhows that the doctrine is ſuited to the juſtification of the Judge himſelf; but, that if any thing goes amiſs, the King's law officers may be ſaddled with the blame, and perhaps with coſts, and lay under the laſh at the pleaſure of the court.

The

The King's Advocate replied, that as to the novelty of the warrant it was a new caſe: That new caſes and a new criſis required new forms; it was enough for him that his Majeſty's warrant was his authority. That he was miniſterial, and to obey his ſuperiors; and had nothing more to do than as far as by law he might to carry into execution the views of the King's Government. He did not pretend to ſay the warrant made law any more than a proclamation makes it, nor was it an authority binding upon the court; but it deſerved reſpect, as in the Eccleſiaſtical Prerogative court, in the caſe of the effects of baſtards dying inteſtate, whoſe effects eſcheat to his Majeſty in his Exchequer.

However he did not, (after the court had expreſſed already its ſentiments) wiſh to puſh the matter further; and would ſuppoſe, on Mr. Goſtling's aſſertion of ſome ſort of letter from Mr. Stephens, that it was true that he had proper authority to proceed; and he did not deſire the queſtion in general to be delayed, on this account, as *all parties were amicably before the court to take it's opinion.*

He

He conceived the general queſtion to ſtand upon the act of Parliament, and the terms of it; alſo upon the objects deſcribed and in contemplation, whereby the Lords Commiſſioners (who are a board merely *executive)* are empowered to execute the office of the Lord High Admiral, but without droits, as profits or emoluments to themſelves, which are eſpecially reſerved in their patent to his Majeſty's only uſe and behoof; and laſtly upon the particular circumſtances of this caſe, in which there was a revolt, and coming in from the enemy.

That it would be incumbent on the council for Lieutenant Metherel to ſhow that he was taking within the meaning of the act, and that the ſhip was not already taken in his Majeſty's name, and a forfeiture to the crown.

That if Metherel is not a captor, then it would be incumbent on the officers of the Admiralty to ſhow, that the ſhip and goods of the inhabitants of the colonies declared rebellious by act of Parliament, and enacted to be forfeited to his Majeſty, are droits and perquiſites of Admiralty, and as ſuch are to be collected, and received, and accounted

counted for by the officers of the Lords Commiſſioners, by virtue of their commiſſion.

Laſtly, they muſt ſhow that the circumſtances of the revolt do not vary the caſe, under the deciſion of the privy council in 1665.

In regard to the general law of prizes taken from the enemy, there is no inherent original right in any perſon, but in the Crown only, and from thence it flows *derivativè* as from the fountain of all property, either by grant and uſage, or by his Majeſty's aſſent in Parliament, and by his royal proclamation for diſtribution in manner and proportion.

It muſt be admitted that before Parliament gave the whole of prizes to the captors, (rather imprudently perhaps) the whole of ſuch prizes as were taken from juſti hoſtes (juſt enemies) as the Civilians term them, and in bello legitimo, by perſons not having public commiſſion, was antiently granted by general words to the Lord High Admiral, by the King's patents, together with wreck of the ſea, flotſon, jetſon and lagon and derelict, and goods

of pirates and rebels, by which muſt be underſtood *Convict*. Some of theſe were granted by general words of *divers droits*, as well as others by ſpecial words.

We all know that the Dutch wars were intended to fill the empty coffers of Charles the 2d, and his brother by prizes.

The emoluments however occaſioned a difference between the King and his Lord High Admiral, which it was thought proper to ſettle by a ſolemn hearing at the Council-board, in March 6, 1665-6.

It appears by Sir Lionel Jenkins's ſtate papers and reports, that a diſpute had ariſen previous to the date of the deciſion. Dr. Budd, one of the Advocates for the Lord High Admiral, drew up a repreſentation of the droits of the Lord High Admiral. Sir Lionel (who was Judge of the Admiralty) reported in favour of moſt of them. For the Admiralty Board not only then, as they do ſtill, wrote to the Judge, who is ſtiled their Lieutenant; they wrote to the Judge for his opinion before hand upon ſeizures, but he was even directed by the King's Commiſſioners at that time of day how he ſhould proceed, and he ſtopped, or went on

juſt

juſt as they ordered him for political reaſons. Sir R. Wiſeman, the King's Advocate, and the reſt of the civilians and common lawyers, as it appears, all varied in their opinions; ſo no argument in reſpect to the preſent caſe can be drawn from thoſe opinions previouſly given, before the deciſive order of Council drew the line, and thereby ſeparated the intereſt of the King from that of the Crown, in the perſon of his Lord High Admiral and his office.

But it appears that ſoon afterwards the King felt ſome inconveniency ariſing politically from ſuffering theſe droits to go through the hands of the officers of the Lord High Admiral.

The Duke of York by deed aſſigned all droits to the King. Prince George of Denmark had droits in his patent, but re-aſſigned them to the Queen.

The Earl of Pembroke did the ſame.

The powers of a Lord High Admiral were ſo great and extenſive, that they were thought to tread upon royalty itſelf. They were reſtrained by Parliament in very early times, and the office was put into commiſſion at the Revolution; and whenever the

office is in commiſſion, "all droits, per-
"quiſites, and emoluments, heretofore *
"granted to *Lord High Admirals by expreſs*
"*words, or otherwiſe*, are declared to be re-
"ſerved *for his Majeſty's ſole uſe and behoof*."

The power of collecting and receiving only remains with the officers of the Admiralty, accountable to the Lords Commiſſioners of the Admiralty, who are any three of them to give diſcharges et quietus eſt to the collector. So far the grant goes: but by courſe of office the Lords are accountable to the Exchequer, and grants of the droits are made by the *King's warrants* in the Treaſury, upon petition.

The commiſſion of the collector of the droits from the Board of Admiralty is before the Court; but it has not been read by the other ſide.

It extends to many things not conſiſtent with law, and the authority of the judge, ſuch as making the collector agent and commiſſioner for all goods and ſhips taken, appraiſed, ſold, &c. &c.

The Board of Admiralty being merely executive, and as truſtees for his Majeſty, and as an inferior board of revenue in the

* Vide the words of the preſent commiſſion.

caſe

caſe of droits, is always ſubject to be ſuperſeded by the ſuperior authority. Sir Lionel Jenkins expreſſedly ſays, vol. 2. p. 765, that the King's prerogative of ſeizing enemy's goods is concurrent with the Lord High Admiral's.

It is eſtabliſhed law, that all grants of any powers of the high prerogative of the Crown are to be interpreted ſtrictly, and the things granted muſt be well ſupported by expreſs words, and the uſage. Nothing therefore can be held to be a droit, which never exiſted at the time of the grant, and therefore could not poſſibly be in the uſage, nor in the contemplation of it.

It was juſtly obſerved by the Court lately in the caſe of the Aletta, that the goods of the rebellious colonies were the goods of no ſuch enemies as were privileged on board of Dutch veſſels, within the view of the treaty of 1673-4 with the States General, and that therefore it does not extend to the caſe of the Americans in arms againſt this country.

It is not aſſerted that there are no droits to the King in his office of Admiralty, but that the ſhips and goods of the inhabitants of the rebellious colonies being declared forfeited to his Majeſty are not droits.

The

The act neither takes away old droits nor makes new ones.

The word is *forfeiture*, and when the word prize is uſed, it is only a ſubſequent to the forfeiture being firſt adjudged. For the right of the King's officers, as captors, is only in expectancy, *after* being firſt adjudged lawful prize, not prize of war but of forfeiture, firſt veſted in the crown, and from that period, and not till then, in the commiſſioned officers, ſeamen, and ſoldiers, ſubject to ſuch proportion and manner as ſhall be ſet forth by proclamation.

A new crime ariſes unforeſeen by the legiſlature. It is declared by Parliament, and a new penalty is provided for reſtraining it. This eſcheat and forfeiture newly created is not given to the Commiſſioners of the Admiralty by the act; nor could it have been in the purview of their commiſſions. The act is clearly in its operation a bill of attainder. It puniſhes without the forms of judgment, or conviction and evidence. All the inhabitants of the rebellious colonies, however innocent, are involved, who come not under the particular exceptions of the act, and their ſhips and goods are eſcheated to the King.

but

His Majeſty's officers and ſeamen, being captors, have a *ſecondary* right, and none but they and His Majeſty can have the property of the ſeizure; the one by a direct, the other by a derived right.

It is unneceſſary to go into all the law of forfeitures. Royal eſcheats, ſays Lord Coke, 3 Inſtit. 111. are thoſe forfeitures which belong to the antient rights of the crown. So where a perſon commits treaſon, his eſtate ſhall eſcheat and be forfeited to the King.

A rebellion is a confuſion of all civil rights, and differs much from the nature of a juſt war.

The relative poſition of perſons and things, and conſequently the reaſonings upon them, are and muſt be intirely new in the ſingular and unfortunate ſtate of Great Britain and her colonies: And no new law can give new droits, which it has not expreſſed.

It is to be bewailed, that the act is ſo far from being clear, that whoever drew it had no other idea than as of an act for prize of war, and formed it on the plan for condemnation of ſhips taken in the Spaniſh and French wars.

Hence

Hence the word prize is introduced in the end of the clauſe; I mean the ſecond clauſe, which veſts the ſole property in the captors, *after* being firſt adjudged lawful prize. The firſt clauſe declares the ſhips and goods of the enumerated colonies in rebellion to be *forfeited* to the King. But giving that word prize all its force, it muſt be underſtood to be prize of forfeiture, for cauſe of rebellion, not of war; that the word prize follows, not leads the propoſition in the act of Parliament, and that in order to be adjudged Prize, a Ship muſt firſt be adjudged to be forfeited.

Caſes have been ſearched for in vain, owing to the confuſion of our Admiralty-office, for the information of the Court; but if any had been found, the precedents of the Lord High Admiral's antient droits would not have fitted the caſe of this ſingular ſtate of hoſtility, and of the terms of the act of Parliament.

Whatever caſes there are upon private notes of authority, they ſhould be fairly ſtated.

Before the cruizers act of Queen Anne, in 1708, all prizes of war taken in port were

were condemned to the Lord High Admiral, although taken by men of war.

The St. Nicholas du Tot, taken by a man of war, Nov. 15, 1702, was condemned to the Lord High Admiral.

The John, Royt, maſter, 25 Nov. 1702, had the ſame deciſion.

But after the act took place, in 1708, giving the ſole property to the captors, although the prizes were by an order of council ſettled to be condemned to the Queen, in her name, and proceedings to be as uſual, the Lord High Admiral had no droits of veſſels ſeized in port by the Queen's men of war.

The Voorſighteyheight, firſt ſeized in the harbour of Falmouth by the Pembroke man of war, was condemned to the Pembroke man of war, July 30, 1709.

This caſe would have been ſtrong in favour of Metherel, if the ſhip Dickenſon had not been already ſeized by others in the King's name.

In the caſe of the Adventure, Brother, maſter, May 17, 1709, the Cuſtom-houſe Officers ſeized for the King; and the Officers of the Admiralty alſo ſeized in port, and prayed condemnation in the Admiralty.

But the Cuſtom-houſe Officers prayed a prohibition on the 3d and 4th of Queen Anne, as being an importation contrary to law: it was argued; and the prohibition was granted, Lord Chief Baron Ward averring, that *the importation*, which was of *prohibited goods*, was *a forfeiture to the Crown, antecedent* to the *ſeizure* for the *Lord High Admiral*. Determined, June 3, 1709.

On appeal to the Lords of caſes of forfeiture, on account of Torture, they were not condemned as droits to the Lord High Admiral.

The Hope, Oſtram, Nov. 13, 1710; Anne Galley, Patton, April 4, 1712; St. Nicholas, Neal, Oct. 15, 1712; were all condemned by the Lords to the Queen.

But as this caſe ought to be argued with candor: although theſe notes are taken from great *authority*, they do not mention the particulars, and we have ſearched the Regiſter-office to no purpoſe, as it is in great confuſion.

The drawer of the act of court in favour of the Admiralty has ventured to define a *revolt*, and ſays it is *a departure from duty*, and that the ſeizors did not revolt from their duty, being already good ſubjects. The Admiralty

Admiralty Proctor, who drew the act, forgot the old law maxim, that Omnis definitio juris eſt periculoſa, Every legal definition is dangerous. The nature of all human language (ſo inadequate to our ideas,) and of our ideas (ſo inadequate to things) is ſuch, that it is almoſt impoſſible to define any thing ſo exactly, but too much will be added, or too little will be expreſſed.

It is indeed a very convenient way for Counſel to raiſe an argument, by giving an a definition, or by ſtating a falſe principle to hurry on to a concluſion. Thus you may argue for ever, and draw conſequences from falſe premiſes ad infinitum.

A revolt means not a departure from duty, as Mr. Goſtling defines it; but it is a coming over from the party to whom a perſon has actually belonged, adhered, or was in the pay and ſervice of; as theſe men were in the pay and ſervice of the Congreſs, and of rebel officers; who freighted their ſhip for rebellious purpoſes.

It would be very difficult indeed to fix the idea of revolt, if the idea of duty is to be joined to it; we muſt then go into all

the queſtions of religious, moral, or civil duties. But the words of deciſion by order of council, in 1665, clears the point. What are the words? *All ſuch ſhips as ſhall voluntarily come in, upon revolt from the enemy, do belong to his Majeſty.* It is clear, that a coming in voluntarily from the enemy, in whoſe power the parties were, is a ſufficient cauſe for eſtabliſhing the King's right diſtinct from the Lord High Admiral's.

The coming in from the enemy is a revolt. Any ſuch definition, as ſtated by the other ſide in their act, is mere chicaning upon the plaineſt words imaginable.

This argument cannot be concluded, without ſaying ſomething upon ſentences in cauſes of condemnation under this act.

The ſentences of the Court muſt conform themſelves in their ſtile to the terms of the act of Parliament.

The ſtile upon the war act will not ſuit this ſubject, nor the times which have given birth to it.

The war act only ſaid, that prizes taken ſhall be the property of the captor. But here this act expreſſedly ſays, that all the ſhips and goods of the inhabitants of the rebellious

rebellious colonies ſhall become *forfeited* to *his Majeſty*; they muſt therefore be adjudged *forfeited* accordingly. And when the act goes on in ſaying, "*as if the ſame were the goods of open enemies, and ſhall be ſo adjudged, deemed and taken in all courts of Admiralty*", if there is any grammar in the world, the word *forfeited* is the antecedent, and the term to which every thing that follows is relative. It means alſo that they ſhall be proceeded in by monition, and by other modes preſcribed by the act; and where the act does not mark the line, then the proceedings are to be in ſuch forms, *as if the ſame were in a lawful war*, according to the uſual courſe of Admiralty proceedings; but ſtill as *forfeited* to the King, ſimply and plainly: and the act *of itſelf* eſtabliſhes no droits in the office of Admiralty, becauſe it declares none.

In ſuch way therefore, and in ſuch ſtile as the act of Parliament declares the forfeiture, we pray this ſhip and cargo to be condemned to his Majeſty, abſolutely and ſimply; the prize, or it's amount, to be delivered to the nominee of his Majeſty's warrant, and conſequently to be accounted for in his *Majeſty's Exchequer*.

Arguments

Arguments on the part of the ADMIRALTY.

Dr. Harris. The warrant of the Crown on which the *King's Advocate relies*, is no authority to the Court, and the prayer that the ſhip and cargo ſhould be condemned in the Exchequer is equally ſtrange. There can be no condemnation here to the King in his Exchequer. Every prize muſt be condemned either to the King in his office of Admiralty, or to the King as taken by his officers, ſince the act has granted the prize to them.

The King's Advocate is called upon to ſhew any precedents, where ſhips of the enemy, taken by perſons not commiſſioned, have ever been condemned to the King, abſolutely and ſimply.

In regard to the claim of Metherel, he is no taker. In the caſe of the Brilliant, which came into the port of Kinſale, and a Midſhipman towed her in, it was condemned as a droit of Admiralty.

In regard to the patents of the Commiſſioners of the Admiralty, and of the Lord High Admiral, Sir Lionel Jenkins ſays in his report, that among other droits, there were

were conveyed to the Lord High Admiral *caſualia.*

It is agreed by all the Advocates who reported at the ſame time, that ſhips, taken *in time of war* by perſons not commiſſioned, were to be adjudged as perquiſites of the Lord High Admiral.

The act of Parliament plainly conſiders the preſent caſe as a caſe of war, and the clauſe (declaring the ſhips and goods of the inhabitants of the colonies enumerated to be forfeited, as if they were the ſhips and goods of open enemies, and ſhall be ſo adjudged, deemed and taken in all courts of Admiralty, and all other courts whatever) plainly conſiders ſuch captures as prize of war, and to be proceeded upon in the ſame courſe; and ſo the commiſſion to the Judge directs him to proceed according to the courſe of the Admiralty.

In regard to the diſtinction taken of a revolt, it will not hold; for it muſt be a revolt from the enemies; now theſe perſons were not enemies, and did not revolt from their allegiance.

Dr. Harris preſſed for coſts againſt Metherel, as having obſtructed the proceedings.

Dr.

Dr. Wynne, on the ſame ſide, went over the ſame ground.

Although no droits, no profits, or emoluments are veſted in Lords of the Admiralty, yet the power of collecting them is in the commiſſion of the Lords, and they accordingly appoint their own collector by their own commiſſion.

The prayer in the act on the part of the Crown is very ſtrange; that the ſhip and goods ſhould be condemned as the effects of the inhabitants of the rebellious colonies, forfeited to his Majeſty, abſolutely and ſimply, purſuant to law, and by virtue of the ſaid act of Parliament, and receivable immediately in his Majeſty's Exchequer, agreeable to his Majeſty's warrant under his ſign manual, counterſigned by the Lords Commiſſioners.

Here is a puzzledom in the act; and as to the authority of the warrant as binding upon the court, that is given up.

It is ſaid, this ſhip is not prize of war, but prize of forfeiture; but it is certainly prize of war. The act of Parliament uſes the word *lawful prize* in general, and the act is a declaration of war. It is his Majeſty's prerogative ſolely to declare war; and this act

act for prohibiting all trade and commerce with the inhabitants is, altho' aukwardly and obſcuredly drawn, the very counterpart in general of the old act of prize of war.

There is not a word of the Exchequer in the whole act, and the commiſſion to the Judge ſpeaks only of proceeding according to the courſe of the Admiralty.

The ſentence of condemnation already has condemned the ſhip and goods, not as a forfeiture, but as a confiſcation and as lawful prize, reſerving to whom the ſame of right belongs.

The King's Advocate has carried up too high the inherent right of the prerogative of the King to all prize of war. Antiently fleets fitted out were the ſhips of the ſubject; the King had one fourth of the prize, the Lord Admiral had two fourths, and the reſt was divided; and ſo it is laid down in the black book of the Admiralty.

But from the time there has been a royal navy, it has been otherwiſe. In Queen Anne's time, at the beginning of the war, the Queen had half, the Lord Admiral had his tenths; but privateers had the whole. Upon the cruizers act, which gave the

whole to the captors, matters were altered, and by the American act the prize offices were ſuppreſſed.

Now the preſent queſtion may be put on this iſſue, Can they produce a caſe in ſeventy years where there has been any condemnation to the King of prize taken by perſons not commiſſioned, but in the office of Admiralty?

Is there any new right, or will it not be very inconvenient that the courſe of buſineſs ſhould be altered from it's uſual mode of proceeding?

In regard to the revolt, there was no coming over of rebels from rebels, no change of allegiance. Dr. Wynne preſſed coſts againſt Lieutenant Metherel, and ſaid that the ſervice would be ruined if commanders of King's ſhips were to have ſhips of the enemy in port; for that they were given too much to ſleep in harbour.

Dr. Calvert for Metherel contended, that neither the King abſolutely, nor in his office of Admiralty could have the prize, if there was a taker being a commiſſioned officer.

That

That neither the revolters were takers, nor the Cuſtom-houſe officers, and therefore the King's officers of the Navy, who ſeized after the ſhip was moored, had the ſole property by virtue of the act; for nobody has a right to take under the terms of the act, but the officers, ſeamen and ſoldiers on board the King's ſhip.

All the caſes of ſhips taken in port, condemned to the Lord High Admiral, were before the prize act of Queen Anne in favour of the Navy officers, and quoted the caſe of the Voorſighteyheith, condemned to the Pembroke. This caſe was decided by the Lords after the act had given away the Queen's right of prize to the captors. This caſe he ſaid the King's Advocate had furniſhed him with. That the ſuperſeding Metherel's claim would be a great diſcouragement to the King's ſervice.

The King's Advocate replied, that he was aſtoniſhed to hear the Advocate for the Admiralty, and the gentlemen with him preſs for coſts againſt Lieutenant Metherel, and wondered who had inſtructed them to puſh ſuch a point. He would not ſay a word for his part to hurt the officers of

the Navy, altho' in this caſe he could not admit Lieutenant Metherel to be a taker within the act.

As to the King's warrant, he thought the meaning of that being uſed on this occaſion was already well underſtood by the Court, and explained by himſelf, not as an authority binding on the Court, but an authority to himſelf to appear before it, and aſſert the King's right. That there was too much reaſon to think from the late deciſions here, and from other reaſons, that every thing relating to the ſeizure of the American ſhips was upon tender ground, and in coming before the Court no more was meant than to have a proper juſtification for the King's firſt law officers themſelves; to take the opinion of the Judge in an amicable way, with which opinion, whatever it may be, he ſhould be ſatisfied, if his ſuperiors ſhall be ſo; and therefore in ſuch a cauſe every matter ſhould be treated with the utmoſt delicacy and decorum. He was therefore infinitely ſurprized to hear any miſrepreſentation of his words, or a want of candour on the other ſide, by counſel concerned for any ſubordinate part of the King's Government,

vernment, upon a queſtion of prerogative claimed by both ſides. He had ever made it a rule of conduct ever ſince he had been at this profeſſion, in no cauſe whatſoever to repreſent a gentleman's words with the leaſt perverſion, or to ſtate falſe facts, or falſe quotations. Nothing is ſo eaſy as by miſtating the expreſſions of the oppoſite ſide to raiſe an argument, and to reaſon on for ever. There is no ingenuity in all this, but it is a practice too common at another bar, and beneath every man who would have the character of a lawyer ſupported, as it aſſuredly may be, on the footing of a real gentleman and man of honor. He would anſwer the arguments ſeriatim of both the learned gentlemen: The word puzzledom was a new word, he could neither find it in the dictionary, nor in any part of the prayer of the act; and he neither loved puzzledom or quibbledom, nor declamation. He would meet the gentlemen on fair grounds of arguing in a cauſe where every thing was to be laid before the Court, ſo as to aid it in forming a judgment; and in which all parties would moſt probably acquieſce as perfectly ſatisfied. To the

aſſertion

aſſertion that there is no diſtinction between the right of the King to prize ſimply, and to prize in the office of Admiralty, is clearly anſwered. There is ſuch a diſtinction even when there is a Lord High Admiral; a much greater creature of Royal prerogative, than the mere executive board of Commiſſioners; and this is proved to a demonſtration, by the deciſion of the order in council in 1665. There the line is drawn between the King and his Admiral; and altho' in the duſt of ages, and the confuſion of office, precedents on all ſides lye buried, yet condemnation to the King of his rights muſt neceſſarily have ran after that deciſion, in a different ſtile to the condemnation of the Lord High Admiral's rights.

The ſtile in the caſe of ſhips taken by the King's men of war is, "condemned to "our Sovereign Lord the King, taken by "ſuch and ſuch perſons commander, &c." ſo far is the propoſition from being true aſſerted by the council on the other ſide, that no prize to the King is condemned in the Admiralty, but only in the ſtile of condemnation to the King, in his office of Admiralty.

The

The chain of precedents, to ſhew that the droits of the King in the office of Admiralty are condemned there, is admitted; but it proves nothing againſt the forfeitures to the King under the preſent act of Parliament. Becauſe this is our propoſition, "The ſhips and goods of inhabitants of the "rebellious colonies, coming and going "from thence and forfeited to the King, "*are no droits*, but are forfeitures."

You cannot reaſon from the war prize act to this act, prohibiting the trade of the American rebellious colonies, and making all their property in their ſhips and cargoes to be eſcheats to the Crown. All eſcheats and forfeitures are not confiſcable in the Exchequer; theſe which ariſe out of a new crime and a new law made to puniſh that crime are made confiſcable here; we do not pray to have them condemned in the Exchequer, but we ſay, when condemned they will be receivable there. I do not mean the Court of Exchequer when I ſpeak of the receipt of the Exchequer. Sir Lionel Jenkins, in his report to the King and council, does not ſay that *caſualia* * are

* Vide argument of Dr. Harris.

conveyed

conveyed to the Lord High Admiral, but bona caſu fortuito reperta, and even there he ſays expreſſedly, that the King has a *concurrent* right with the Lord Admiral. He ſpeaks of only two precedents being to be found of the Lord Admiral having ſhips in port, and then he ſays it did not appear by whom taken; and he gives the preference to the King's ſhips before the Lord Admiral.

But after all in regard to his report, (altho' he was Judge) and Sir R. Wiſeman's, the King's Advocate, and Sir William Turner's, the Lord Admiral's Advocate, and Dr. Budd's repreſentations of the Lord Admiral's rights, they were all mere opinions 'till the point was finally decided at a ſubſequent period, by the order of council in March 1665-6, and all thoſe opinions varied upon the ſubject of the Dutch war, as much as ours do upon the preſent ſubject of the American rebellion; in which every thing is novel.

Sir Lionel's opinion was an extrajudicial report; and it is ſomething ſingular even in theſe times that the Lords of the Admiralty call upon their Judge for reports.

I very much doubt, in the preſent caſe, whether the Advocate of the Admiralty has reported this ſhip to be a droit; and I am exceedingly jealous of Sollicitors and Proctors of any Boards carrying on ſuits without a ſanction and authority from their ſuperiors.

But we are told it would be improper and inconvenient to change the courſe of proceedings. The anſwer is, you muſt change the proceedings; they muſt fit the ſubject matter. There is a ſtrange diſpoſition in many men to ſtart at every thing that is novel: the argument is, ab ignavia ad ignaviam, from the idle to the indolent; and who would fit every leg, however ſore, to the ſame boot. If the act of Parliament had been better and more carefully drawn, it would have ſaved much confuſion, by being better fitted to the buſineſs of this peculiar rebellion, which is very different from a war with Spain and France, and has very different conſequences both legally and politically. But here a new crime is declared, a new law is made, new proceedings muſt be had of courſe to carry it into execution, unleſs we mean to embaraſs Go-

vernment, and add to the confuſion. It is a ſaying in ſome civil law books very juſt, Mutatis hominibus quid obſtat mutari ſententiis? Change the ſtate of men and the laws, and their deciſions muſt change with them. In other words, new men, new meaſures; new principles, new conſequences.

There is no wiſdom in oppoſing a violent ſtream; and the man who does ſo, under an idea of avoiding difficulties and remaining at his eaſe, will only encreaſe his uneaſineſs and perplexities in the end. I love not novelties in religion, law, or politicks more than any man here; but there is a time and tide of human things, which bears down all before it, like a flood.

The King's warrant in this cauſe is new, it is ſaid: But is that any reaſon to alarm a court? Is not the Judge's warrant in all theſe cauſes of forfeiture for rebellion new? The commiſſion by which this cauſe is heard? and from the terms of which they argue? But ſhow precedents, it is urged with an air of triumph? I anſwer, ſhow thirteen colonies of Britiſh ſubjects in arms againſt the mother country; a naval force

and

and immenſe army on the part of the colonies, who have declared themſelves independent, and aſſumed ſovereignty.

A new ſcene is this, aſtoniſhing to all Europe; ſuch as if any man had predicted twenty years ago, it would have been thought a ſufficient reaſon for a ſtatute of lunacy againſt him, and for his confinement. Yet the counſel on the other ſide argue againſt novelty in proceedings upon an act intended to reſtrain this rebellion, which is of a ſpecies never known in the hiſtory of the whole globe, (for I do not admit the caſe of the Netherlands, which were not colonies of Spain, to be analogous) and to which evil we hardly know how to apply the remedy of the laws, but that of force, with which the conſtitution is armed.

The warrant of the Crown in the caſe of prizes, not granted away to the ſubject by royal declaration or act of parliament, is not a novelty. But where are the precedents on the other ſide of Admiralty droits of the goods of inhabitants of the rebellious colonies forfeited to the King?

It is true the act uſes the word *prize*, and does not uſe the word Exchequer; it is anſwered

ſwered by us, it does not uſe the word droits of Admiralty, nor of perquiſite, when any ſhip is forfeiture to the King: then, and *not till then* it becomes lawful prize. Under this act if there were a Lord High Admiral, he ought not to have this forfeiture; and as to the King's officers under this act againſt rebellion, as under the late act for war, the captor has no right immediate to the capture 'till after it ſhall have been adjudged, that is, until it ſhall have been finally adjudged lawful prize to his Majeſty; and all the intereſt of the captor is only a ſecondary right, dependant and in expectancy, the primary right being to his Majeſty, and the capture being firſt, according to the uſage and ſtile of the court, condemned to our ſovereign Lord the King, and moved and proſecuted by the King's own Advocate and Procurator-General, in his Majeſty's name; and the monition citing all perſons having intereſt to appear, being taken out by the latter from the proper office of the court.

As "lawful prize," follows conſequential of forfeiture, ſo eſcheat receivable in the Exchequer follows conſequential of forfeiture,

I meant the receipt of the Exchequer, not the judicial Court of the Exchequer; I do not mean to infringe the juriſdiction of the Admiralty Court: tho' I muſt add, it derives it's whole authority in matters of prize of war and *forfeiture* from an *occaſional* act of Parliament; otherwiſe doubtleſs the Court of Exchequer might interpoſe judicially which has a ſtanding juriſdiction in all matters touching the King's revenue, and all profits acquired to the Crown.

There has been ſomething quoted, but not truly from Sir Lionel Jenkins about *caſualia*. If we look into the books, we ſhall find that there is in the conſtitution of this country, an officer at the Exchequer called the King's Eſcheator, of very antient eſtabliſhment under the Lord Treaſurer, whoſe buſineſs it is to inform of eſcheats and caſual profits of the Crown, and to ſeize them into the King's hands, and who accounted to him, Co. Litt. 92. and concerning the deference to be paid to the nominee of the Crown and the King's warrant, ſee 1 Salk. 37.

I am not very fond of pedantick diſſertations, but as a very learned gentleman has quoted

will in its title; becauſe it involves all the inhabitants of the rebellious colonies in penalties of forfeiture for the crime of many. It was ſo underſtood both by adminiſtration who defended it, and by thoſe perſons who oppoſed it in the Houſe of Commons: One party ſaid it was unjuſt and inhuman; the other ſaid it was neceſſary, and that diſtinctions in the moral and natural world were in many caſes in this life impoſſible, 'till Providence ſhall cloſe the whole, and diſcover the great end of all things. That the innocent have a remedy to form counter aſſociations; they muſt riſe againſt the authors of their calamities.

The learned gentleman inſiſts the act is a declaration of war, which *the King, he ſays, can only declare*; what is this, but to get upon the ground of argument uſed by the rebels, that this war is not the King's war, but the Parliament's war?

The argument drawn from the terms of the laſt proviſional interlocutory decree, which reſerved the queſtion to whom the ſhip and cargo of right belong, and condemned the ſame "*as prize*," without uſing the form in the act *forfeited*, is very uncandid

candid and unbecoming in a cauſe where we are all to inform the Court; to be clear, and not ſubtle.

In the firſt place, the drawing up of that interlocutory decree was not attended to at the time, and of courſe not objected to in point of words; for if it had been objected to then, we muſt have gone at that time into the whole of the preſent queſtion. 2dly. If the interlocutory decree is ill worded, it may be and muſt be reformed and adapted to the final ſentence. 3dly. Any Regiſtrar's manner of taking down any order, according to his own language and ideas, as in a matter of courſe, will not bind down the Judge upon a final hearing.

The law calls the Regiſtrar of a Court oculus judicis; but he is neither the ear nor the head: and it is well Regiſtrars are not, for otherwiſe, under the idea of caſing a Judge, they might determine many a cauſe; at leaſt might have a bias.

It is ſaid, that here is no revolt from the enemy. It is ſo far from being true, that the Mate, to the 9th interrogatory, expreſſedly ſwears, that Bayard and Jackſon, the owners of the ſhip, came on board, and

were officers in the rebel army, and in regimentals, which he deſcribes; the cargo belonging to the Congreſs. He therefore, and the reſt of the crew who revolted, were their ſervants; and the Maſter adhered ſo perfectly to them, that he offered Sands who was the Mate, and the crew, ſix months wages to change their reſolution again and to complete the voyage. To ſay therefore, that here *is no voluntary coming in from the enemy upon revolt*, is a *falſe aſſertion in the teeth of evidence*, and the definition of revolt being a *deſertion* of *duty* is a wretched quibble to avoid the article of the deciſion of council, in 1665-6, which ſays, that *not the Lord Admiral, but the King ſhall have a ſhip coming in from the enemy voluntarily upon revolt*. Did not Sands the Mate revolt from his *adherence* to his Maſter and the Congreſs?

As to arguing out of the paper or *act of Court*, it is equally uncandid. This is merely a paper, ſtating facts, drawn up and ſigned by both parties, for the information of a Court previous to a hearing of their reſpective petitions. This act is handed about and ſent from one Proctor to another.

It

It is ornamented ſometimes with flowers more than is fit, by practitioners who delight in them: but no Counſel ever argues properly from the deductions or reaſonings of Proctors, but from ſubſtantial facts. As to the prayer, it is to be adhered to; there is no puzzle in it: the words *forfeited to the King* were never in any prize act of war before: to that ſtile of forfeited we pray, that the ſentence of the Court may be conformable. Upon this *word* the whole argument turns; as in this ſpecial act of Parliament, the whole queſtion is concentered.

We pray, that the ſhip and cargo in queſtion may be decreed forfeited to his Majeſty, and of courſe, by law, to be received in his Exchequer.

Mr. Chamberlayne appears not as Sollicitor of the Board of Treaſury, but as *nominee* of his Majeſty.

The Deputy Regiſter, Mr. Biſhop, aroſe. He ſaid the King's Advocate had bore very hard upon him for the office of the Regiſtry being in great confuſion. That it never was in ſuch good order as it had been ſince his time, and that he had taken great

pains in ſearching for precedents, and had been always ready to communicate every thing that was called for.

The King's Advocate replied, that he had not the leaſt idea of reflecting upon the Deputy Regiſter himſelf, whom he knew to be a very good officer; but that his predeceſſors were not equally careful of the records of office, as every body there knew; and when he ſpoke of precedents not being to be found, the precedents named were of near a hundred years ago, and no wonder if they were buried in the duſt of ages. That every public officer ought to be paid for his trouble, and that it merited highly the attention of Government, that an office of record in ſo important a department as the Admiralty ſhould have it's regiſtry put into due regulation and kept in a proper place, that indexes ſhould be made, and the Deputy Regiſter be paid for his trouble.

Sir George Hay. This act is a declaration of war*, and the Courts of Admiralty are to proceed to confiſcation under it.

The act does not affect the rights of the Admiralty; ſays nothing about them: and ſo

* The Parliament cannot declare war.

ſo the prize act in time of war ſaid nothing about them, yet they remained to the Admiralty.

As to the particular word *forfeited* in the act, it is an ill-founded imagination that this makes an eſcheat. The *courſe*† of Admiralty

† The only courſe of Admiralty cannot have been to pronounce prize to the King in the office of Admiralty, or to the captor, becauſe in Charles the 2d's time, there muſt have been condemnation to the King of his own ſhare, independent of the Lord High Admiral's; and in Queen Anne's time to herſelf, of the moiety which was the Queen's, from 1702, till the act in favour of captors in 1708; and then by an order of council, dated March 1708, it was ſettled, that *all proceedings for prize were to be in the Queen's name as formerly.* Before this act the Queen doubtleſs had her Commiſſioners. The Crown does every thing and receives every thing by commiſſion.

Charles II. had his Commiſſioners of prizes, to whom the King's prizes were condemned. Lord Aſhley was Firſt Commiſſioner; and it was owing to the Duke's Commiſſioners complaining that they were obſtructed by the King's Commiſſioners, that the matter was referred for a ſolemn hearing before the Privy Council, in 1661, when the regulations were made on which the King's Advocate now inſiſts. The inſtructions of the Collector of the Admiralty droits at this day ſquare exactly with theſe regulations. The caſes of the King's own prizes, which are diſtinguiſhed in the deciſion of the Council in 1661, make no part of his inſtructions. And ſo far is the

miralty proceeding is to be obſerved; and *as to the operation* of the act, *my opinion is*, that it would be very *hard* to underſtand by it, that *all the American ſubjects trading* to and from *America, innocently intending, or ſmuggling with other nations, in the way uſually connived at, are to be deemed rebels, and their ſhips and goods confiſcated.*

Before you can condemn, you muſt prove that the parties have been actually concerned in ſome act of rebellion.

In this caſe the crew did not agree in any act of rebellion; they ſeized the ſhip as American, and confined the Maſter, and delivered her up to the officers of the Cuſtoms.

The Captain is an enemy, and ſo being diſpoſſeſſed, it brings it within the caſe of the doctrine, that an enemy's ſhip taken by perſons non-commiſſioned is a droit to the King in his office of Admiralty.

The men were liege ſubjects of the King (and not to be conſidered as rebels) they did

the King's warrant from being a novelty in the preſent age, that his late Majeſty had Commiſſioners of prizes for thoſe which were taken, when hoſtilities began before the declaration of the late war.

did not conſider themſelves ſo, and for that reaſon they never revolted from the enemy.

There is a great difference when there is a Lord High Admiral, and when the King acts as Lord High Admiral himſelf.

Theſe men were not revolting enemies, but the ſhip came in by good ſubjects means, and they deſerve their reward. Doubtleſs Government will give it them.

Rebels goods have always been condemned as droits of Admiralty, when taken by non-commiſſioned perſons. Many caſes of this ſort were adjudged in the laſt rebellion*. There was a caſe of the ſhip the Duke de Vendome determined in 1716. The diſpute was then the ſame as now, and it was ſaid, that bona rebellatorum belonged to the King, independently of the office of Admiralty. The caſes of the confiſcation of the goods of rebels in the Duke of Monmouth's rebellion, decreed to King James II. and moved by Dr. Oldys, the King's

* At that period there was no ſpecial act of Parliament *declaring that rebellion*, or enacting *forfeiture* to the King of the goods and effects of perſons only *virtually* rebels, that is, as *inhabitants (merely)* of *rebellious colonies*.

King's Advocate, were then quoted; but the Court obſerved, that at the time of Monmouth's rebellion, there was neither any Lord High Admiral, nor was the office in commiſſion; the King exerciſed it himſelf.

Had there been a clauſe in the preſent act, as there ſhould have been, reſerving all forfeitures taken by perſons non-commiſſioned to the King immediately, it would have done.

The non-commiſſioned takers have always been allowed ſalvage by the Court, and I have known half given.

I condemn the ſhip and goods as a droit of Admiralty.

The King's Advocate then moved, that the ſentence might be without prejudice to the right of the ſalvors. I have very good reaſons for this on the part of Government.

Judge. For what reaſon? Doubtleſs you muſt have good reaſon.

Anſwer. For the reaſon juſt now given by the Court itſelf, becauſe they deſerve it.

Judge.

Judge. I will not give it now; let the King's Government reward them as it pleaſes.*

* Sir George Hay afterwards declared privately to the King's Advocate, that he was miſtaken in this general deciſion, and was very ſorry for it.

The caſe of the Voorſighteyheit, quoted by Dr. Calvert as cited by the Advocate General, and that it was condemned to the Admiralty, was not ſo cited; for it was cited as condemned to the Pembroke man of war, though taken in port; and ſo decreed by the Lords of appeal, 30th of July, 1709, after the act of the Queen in 1708 had paſſed, giving all right of prize to the captors.

At the Council held at *Worceſter-Houſe*, the 6th of March, 1665-6,

PRESENT

The KING's moſt Excellent Majeſty,

His Royal Highneſs the Duke of York,
His Highneſs Prince Rupert,
Lord Chancellor,
Duke of Albemarle,
Earl of Lauderdale,
Lord Fitzarding,
Lord Arlington,
Lord Berkeley,
Lord Aſhley,
Mr. Sec. Morice,
Sir William Coventry.

WHEREAS through the long intermiſſion of any war at ſea by his Majeſty's authority, ſeveral doubts have ariſen concerning certain rights of the Lord High Admiral in time of hoſtility, the determination whereof appearing very neceſſary for the direction as well of his Majeſty's officers as of thoſe of the Lord High Admiral; upon full hearing and debate of the particulars hereafter mentioned, the King's Council learned in the common law, and likewiſe the Judge of the High Court of Admiralty, and thoſe of his Majeſty, &c. his Royal Highneſs the Lord High Admiral's

miral's counſel, in the ſaid High Court of Admiralty being preſent, his Majeſty preſent in Council, was pleaſed to declare,

1ſt. That all ſhips and goods belonging to enemies coming into any port, creek, or road of this his Majeſty's kingdom of England or of Ireland, by ſtreſs of weather or other accident, or by miſtake of port, or by ignorance, not knowing of the war, do belong to the Lord High Admiral; but ſuch as ſhall *voluntarily come* in, either men of of war or merchant-men, *upon revolt*, from the enemy, and ſuch as ſhall be driven in, and forced into port by the King's men of war, and alſo ſuch *ſhips as ſhall be ſeized* in any of the *ports*, creeks or roads of this kingdom, or of Ireland, *before any declaration of war or repriſals* by his Majeſty, do *belong unto his Majeſty*.

2d. That all enemy's *ſhips* and goods caſually met at ſea, and ſeized by any veſſel not commiſſionated, do belong to the Lord High Admiral.

3d. That ſalvage belongs to the Lord High Admiral for all ſhips reſcued.

4th That all ſhips forſaken by the company belonging to them, are the Lord High

Admiral's, unleſs a ſhip commiſſionated have given the occaſion to ſuch dereliction, and the ſhip ſo left be ſeized by ſuch ſhip purſuing, or by ſome other ſhip commiſſionated then in the ſame company, and in purſuit of the enemy. And the like is to be underſtood of any goods thrown out of any ſhip purſued.

Extracted

Extracted from the Regiſtry of his Majeſty's High Court of Admiralty of England.

GEORGE the Third, by the grace of God, of *Great-Britain, France* and *Ireland*, King, Defender of the Faith, &c. To our right truſty and right well-beloved couſin and counſellor John Earl of Sandwich, our truſty and well-beloved John Buller, Eſq; our right truſty and well-beloved couſin Henry Viſcount Palmerſton of our kingdom of Ireland, our truſty and well-beloved Charles Spencer, Eſq; commonly called Lord Charles Spencer, our right truſty and well-beloved couſin Wilmot Viſcount Liſburne of our kingdom of Ireland, our truſty and well-beloved Henry Penton, Eſq; and Sir Hugh Palliſer, Bart. greeting: whereas we did by our Letters Patent, under our great ſeal of *Great-Britain*, bearing date at *Weſtminſter* the thirtieth day of December, in the fifteenth year of our reign, nominate, conſtitute and appoint you the ſaid John Earl of Sandwich, John Buller, Henry Viſcount Palmerſton, Charles Spencer, commonly called Lord Charles Spencer, Wilmot Viſcount Liſburne, and Henry Penton; together with our right truſty

truſty and well-beloved counſellor Auguſtus John Hervey, to be our Commiſſioners for executing the office of our High Admiral of our kingdoms of *Great-Britain* and *Ireland*, and of the dominions, iſlands and territories thereunto reſpectively belonging; and of our High Admiral of *New England*, *Jamaica*, *Virginia*, *Barbadoes*, *Saint Chriſtopher*, *Nevis*, *Mountſerrat*, *Bermudas* and *Antigua* in *America*; and of *Guiney*, *Binny* and *Angola* in *Africa*, and of the iſlands and dominions thereof; and alſo of all and ſingular our other foreign plantations, dominions and territories whatſoever, and places thereunto belonging, during our pleaſure, as by our ſaid recited letters patent, amongſt other things therein contained, relation being thereunto had, may more fully and at large appear. Now know ye, that we have revoked and determined, and by theſe preſents do revoke and determine our ſaid recited letters patent, and every clauſe, article and thing therein contained. And know ye further, that we, repoſing eſpecial truſt and confidence in the approved wiſdom and fidelity and experience of you the ſaid John Earl of Sandwich, John Buller,

Buller, Henry Viſcount Palmerſton, Charles Spencer, Wilmot Viſcount Liſburne, Henry Penton, and Sir Hugh Palliſer, of our eſpecial grace, certain knowledge and meer motion, have nominated, conſtituted and appointed, and by theſe preſents do nominate, conſtitute and appoint you to be our Commiſſioners for executing the ſaid office of our High Admiral of our ſaid kingdoms of *Great-Britain* and *Ireland*, and of the ſaid dominions, iſlands and territories thereunto reſpectively belonging; and of our High Admiral of *New England*, *Jamaica*, *Virginia*, *Barbadoes*, *Saint Chriſtopher*, *Nevis*, *Mountſerrat*, *Bermudas* and *Antigua* in *America*; and of *Guiney*, *Binny* and *Angola* in *Africa*, and of the iſlands and dominions thereof; and alſo of all and ſingular our other foreign plantations, dominions and territories whatſoever, and places thereunto belonging, during our pleaſure; giving and by theſe preſents granting unto you our ſaid Commiſſioners, or any three or more, during our pleaſure, full power and authority to *do, execute, exerciſe and perform all and every act, matter and thing which do belong or appertain to the* office of our High Admiral of

our

our ſaid kingdoms of *Great-Britain* and *Ireland*, and of the dominions, iſlands and territories thereunto reſpectively belonging; and of our High Admiral of *New England*, *Jamaica*, *Virginia*, *Barbadoes*, *Saint Chriſtopher*, *Nevis*, *Mountſerrat*, *Bermudas* and *Antigua* in *America*; and of *Guiney*, *Binny* and *Angola* in *Africa*, and of the iſlands and dominions thereof; and alſo of all and ſingular other our foreign plantations, dominions and territories whatſoever, and places whereſoever to them or any of them belonging, as well in and touching all thoſe things which concern our navies and ſhipping, as thoſe which concern the rights and juriſdictions of or appertaining to the office of our High Admiral aforeſaid. And we do further by theſe preſents give and grant unto you our ſaid Commiſſioners, or any three or more of you, full power and authority to make ſuch orders, and iſſue ſuch warrants for the repairing and preſerving our ſhips and veſſels already built and to be built in harbour, with all things belonging to them and every of them, according to your beſt directions, and for the well building, repairing, fitting, furniſhing, armi..g,

arming, victualling and ſetting forth ſuch ſhips and fleets *as you ſhall receive directions for, either* from us or from *our Privy Council, and alſo to* eſtabliſh and direct ſuch entertainments, wages, and rewards for and unto all and every ſuch perſon and perſons as are or ſhall be employed in thoſe our ſervices, or any thing appertaining thereunto, and further to give diſcharges for thoſe ſervices, or any of them, as to you, or any three or more of you, in your wiſdoms and good diſcretions, ſhall be thought fit, in as ample manner and form as any our High Admiral or Admirals of our ſaid kingdoms of *Great Britain* and *Ireland*, and of the dominions, iſlands and territories thereunto reſpectively belonging, or any of them, and as any our High Admiral of *New England, Jamaica, Virginia, Barbadoes, Saint Chriſtopher, Nevis, Mountſerrat, Bermudas*, and *Antigua* in *America*, and of *Guiney, Binny* and *Angola* in *Africa*, and of the iſlands and dominions thereof, or of any other our foreign plantations, dominions, and territories whatſoever and places thereunto, or to any of them belonging, might have done, by virtue of his or their office or

place of our High Admiral, or by virtue of any commiſſion granted in that behalf, might do or perform the ſame. And our further will and pleaſure is, and we do hereby ſtrictly charge and command all our officers and miniſters of or belonging to our navy or ſhips, and every of them, now and for the time being, and all others in their ſeveral places, whom it may in any wiſe concern, that they and every of them be, from time to time, attendant to you our ſaid Commiſſioners, and do carefully and diligently obſerve, execute, and perform all ſuch orders, warrants, and commands, as you our ſaid Commiſſioners, or any three or more of you, ſhall make, give, and direct touching the premiſſes, in ſuch manner and ſort, as if our High Admiral of *Great Britain* and *Ireland*, and of the dominions, iſlands and territories thereunto reſpectively belonging, or of *New England*, *Jamaica*, *Virginia*, *Barbadoes*, *Saint Chriſtopher*, *Nevis*, *Mountſerrat*, *Bermudas*, and *Antigua* in *America*, and of *Guiney*, *Binny*, and *Angola* in *Africa*, and of the iſlands and dominions thereof, or of any other foreign plantations, dominions, and territories

tories whatſoever and places whereſoever thereunto, or to any of them belonging, had made, given, or directed the ſame. And to the intent you our ſaid Commiſſioners may be the better inſtructed how to perform this great and weighty ſervice to our beſt advantage, and we and our Privy Council may be the better informed what orders and directions, from time to time, to give therein, our will and pleaſure is, and we do hereby of our more eſpecial grace, certain knowledge, and meer motion, give and grant unto you our ſaid Commiſſioners, or any three or more of you, power and authority, not only by yourſelves but alſo by any other fit perſon or perſons whom you, or any three or more of you, ſhall make choice of and appoint, with all convenient ſpeed, to make a true and perfect ſurvey and account of all ſuch ſhips, pinnaces, and veſſels of or belonging to our navy, and of all the munition, tackle, and furniture belonging to them, or any of them, and of all ſtores, ammunition, and furnitures prepared for them and every of them, of all ſorts, and alſo of all courſes now held in managing, ordering, and governing of our navy, and

to deliver the ſame, ſo made and taken, unto us in *writing, and to propound* ſuch ways and means for the eſtabliſhing ſuch orders and inſtructions for regulating the ſame, as ſhall be found agreeable to our ſervice, and as may increaſe our power and forces by ſea, and remove ſuch corruptions and abuſes as may prejudice the ſame, and eſpecially may reduce the mariners and ſeamen, and ſea ſervice, to better order and obedience than is now found amongſt them, that thereupon we may take ſuch ſpeedy and effectual courſe for the ſupplying of all defects and reforming of all abuſes, as ſhall be neceſſary to make and continue our navy ſerviceable and powerful for our honour, and for the honour and ſafety of our realms and dominions. And whereas all wrecks of the ſea, goods, and *ſhips taken from pirates*, and divers droits, rights, duties, and priviledges have been, by expreſs words or otherwiſe, heretofore granted to our ſaid High Admiral, and to former Admirals, for their own benefit, as duties appertaining to the office or place of our High Admiral aforeſaid; now our further will and pleaſure is, and we do hereby charge and command

command, that all caſual duties, droits, and profits be taken, collected and received in all places where they ſhall happen, by the Vice-Admirals, and other officers of or belonging to the Admiralty, in ſuch ſort as they formerly were or ought to have been *taken, collected* and *received* by them, and every of them reſpectively, when there was an High Admiral of *Great Britain*; and the ſaid Vice-Admirals and others, ſo taking, collecting, or receiving the ſame, *ſhall account* for the ſame, and every part thereof, unto or before you our ſaid Commiſſioners, or any three or more of you, or unto ſuch other perſon or perſons, in ſuch manner and form as you, or any three or more of you, ſhall to that purpoſe appoint, but *to our only uſe and behoof, and not otherwiſe.* And whereas we conceive it juſt and reaſonable that thoſe who have or ſhall truly and faithfully account for what they receive, ſhould have ſufficient diſcharges for the ſame, our will and pleaſure is, and we do therefore by theſe preſents give and grant to you our ſaid Commiſſioners, or any *three* or more of you, full power and *authority* to *iſſue forth* diſcharges, releaſes, and *quietus*

eſts

eſts upon ſuch *accounts*, *for* all duties, droits and profits whatſoever received or to be received by the aforeſaid Vice-Admirals, or other collectors, receivers, or any commiſſioners authorized by the Court of Admiralty to receive any droits or profits of Admiralty, or any Regiſter or Regiſters, or his or their deputy or deputies exerciſing the office of Regiſter in the High Court of Admiralty itſelf, or in any other inferior court of the Admiralty, as you our ſaid Commiſſioners, or any three or more of you, ſhall approve of the ſaid releaſes, diſcharges, or quietus eſts, to be under the hands of you our ſaid Commiſſioners, or any three or more of you, and the ſeal commonly uſed by you for things appertaining to the ſaid Commiſſion, which we will ſhall be and remain of record in the High Court of Admiralty, under the cuſtody of the Regiſter there, to the end that the parties concerned in ſuch accounts and diſcharges, may, according to their occaſions (if they deſire it) receive the ſame exemplified under the great ſeal of our Admiralty. And our further will and pleaſure is, and we do hereby declare, that the ſaid releaſes, diſcharges and quietus eſts, ſo ſigned

by

by you our ſaid Commiſſioners, or any three or more of you, and ſealed with your ſeal aforeſaid, or the duplicates thereof, recorded in the High Court of Admiralty, ſhall be held, deemed and taken, and be a full, ſufficient and lawful diſcharge, releaſe and quietus eſt to every ſuch accountant, his executors or adminiſtrators. And whereas all offices, places and employments belonging to the Navy or Admiralty are properly in the truſt and diſpoſal of our High Admiral of *Great Britain* and *Ireland*, and of the dominions, iſlands and territories thereunto reſpectively belonging, and of our High Admiral of *New England*, *Jamaica*, *Virginia*, *Barbadoes*, *Saint Chriſtopher*, *Nevis*, *Mountſerrat*, *Bermudas* and *Antigua* in *America*, and of *Guiney*, *Binny* and *Angola* in *Africa*, and of the iſlands and dominions thereof, and alſo of all and ſingular our other foreign plantations, dominions and territories whatſoever and places whereſoever thereunto belonging for the time being; and ſuch High Admirals have conſtituted Vice-Admirals under them, our will and pleaſure now is, and we do hereby of our further eſpecial grace, certain knowledge

ledge and meer motion, declare and grant, that all ſuch offices, places and employments as ſhall fall void during the vacancy of the office or place of our High Admiral aforeſaid, ſhall be given and diſpoſed of by you our ſaid Commiſſioners, or any three or more of you; and you our ſaid Commiſſioners, or any three or more of you, ſhall and may conſtitute Vice-Admirals for ſuch places where Vice-Admirals have been uſually appointed by our ſaid High Admiral for the time being. Laſtly, our will and pleaſure is, and we do by theſe preſents grant to you our ſaid Commiſſioners, that theſe our letters patent, or the exemplification or inrollment thereof, ſhall be and remain in and by all things good, firm, valid and effectual in the law, notwithſtanding the ill reciting, or not truly or not fully reciting the ſaid former letters patent, or the date thereof, and notwithſtanding the not reciting any other letters patent or commiſſion concerning the ſaid office and premiſſes, or any of them, heretofore made or granted by us or any of our anceſtors or predeceſſors, or any other omiſſion, imperfection, defect, matter, cauſe, or thing whatſoever to the contrary thereof

in any wiſe notwithſtanding. In witneſs whereof we have cauſed theſe our letters to be made patent. Witneſs ourſelf at *Weſtminſter*, the twelfth day of *April*, in the fifteenth year of our reign.

By writ of Privy Seal,

YORKE.

Godf. Lee Farrant, Regiſtrar.

Extracted from the Regiſtry of His Majeſty's High Court of Admiralty of England.

By the Commiſſioners for executing the office of Lord High Admiral of *Great Britain* and *Ireland*, &c.

To *John Jackſon*, eſq;

WHEREAS all wrecks of the ſea, goods and ſhips taken from pirates and enemies, and divers tenths, and other droits, rights, duties, and priviledges, which have been heretofore granted to former Lord High Admirals for their own uſe and benefit, as duties appertaining to the office or place of Lord High Admiral, are, by his Majeſty's commiſſion to us, appointed to be taken, collected, and received, in all places where they ſhall happen, in ſuch ſort as they formerly were or ought to have been taken, collected, and received, when there was a Lord High Admiral of *England*, but for his Majeſty's only uſe and behalf; and, we having a good account of your experience and integrity,

grity, in which we very much confide, we do, according to the power granted unto us, conſtitute and appoint you the ſaid *John Jackſon*, eſquire, to be our Receiver-General of the revenues ariſen, or to ariſe, by all or any of the rights and perquiſites of Admiralty, under what denomination ſoever the ſame have ariſen, or ſhall or may ariſe, in the room of *Burrington Goldſworthy*, eſquire, deceaſed; and we do hereby nominate and conſtitute you to be our commiſſioner to aſk, demand, recover, and receive, to and for his Majeſty's uſe, all and all manner of rights and perquiſites that have been or ſhall be ſeized and taken in time of war, or otherwiſe, and alſo all other ſuch ſums of money as have been uſually paid, or ſhall be ordered by decree of court to be paid into the hands of *Godfrey Lee Farrant*, eſquire, or the Regiſter for the time being; and we do hereby appoint, that all commiſſions for reſtitutions, and ſuch decrees and orders as have been formerly directed by the Judge of the Admiralty, ſhall, from the date hereof, be directed to you as our commiſſioner; and we

do hereby appoint you to get duly *and juſtly executed all commiſſions for appraiſements, as well of ſhips and goods reſcued,** *as of ſhips and goods taken by privateers, and all other ſhips and goods wherein his Majeſty has any rights* or perquiſites of Admiralty, as likewiſe *all commiſſions for the ſale of ſuch ſhips and goods, as alſo* to have *all* commiſſions *duly returned into* the Regiſtry of the High Court of Admiralty; and in the execution of this employment, you are to obſerve and follow ſuch inſtructions, orders, and directions, as you ſhall from time to time receive from us; and we do likewiſe appoint, that you the ſaid *John Jackſon* ſhall have the yearly ſalary of three hundred pounds for your own care and pains in the due execution of this employment, the ſaid ſalary to commence from the date hereof; and we do hereby empower and direct you to deduct out of the ſaid perquiſites, from

* When the Lord High Admiral had ſalvage of all ſhips reſcued by the King's ſhips, and the Crown had tenths of prizes taken by privateers, this clauſe operated: but ſince the rights of the King and Lord High Admiral have been granted to the captors, this part of the Commiſſion, excepting as to droits, is void.

time

time to time, your aforeſaid ſalary, and to make ſuch an allowance to your clerk as any other your predeceſſor did; and this our commiſſion is to continue in full force till further order. Given under our hands and the ſeal of the office of Admiralty, this 24th day of *January*, one thouſand ſeven hundred and ſeventy-four, in the fourteenth year of his Majeſty's reign.

By Command of their Lordſhips,
Ph. Stephens.

SANDWICH.
J. BULLER.
PALMERSTON.
C. SPENCER.

Godf. Lee Farrant, Regiſtrar.

By

By the Commiſſioners for executing the Office of Lord High Admiral of *Great-Britain* and *Ireland*, &c.

Inſtructions *for John Jackſon, Eſq; Receiver-General of the rights and perquiſites of the Admiralty.*

1ſt. YOU ſhall, according to the truſt and confidence we have repoſed in you, diligently apply yourſelf on all occaſions to the promoting and advancing all the juſt rights, droits and perquiſites of the Admiralty, according to the beſt of your ſkill and knowledge; and for the better enabling you to perform the ſame, you are to appoint agents at all ſuch ports and places as you ſhall find neceſſary, with whom you are to hold correſpondence, and give neceſſary directions for the preſervation of all juſt rights aforeſaid; and who for their trouble herein are to have ſuch allowances as ſhall, from time to time, be thought reaſonable.

2d. You are to inform yourſelf of and demand all ſuch ſhips and goods as either do or may belong to his Majeſty's enemies, and

and ſhall come into any port, creek or road of England or Ireland, or of the foreign plantations, by ſtreſs of weather or other accident, or miſtake of port, or by ignorance not knowing of the war; and alſo of all enemies ſhips and goods caſually met at ſea, and ſeized by any veſſel not commiſſioned; and of all ſuch ſhips and goods as ſhall be forſaken or derelicted by enemies; as alſo for ſalvages of all ſhips reſcued or retaken; and of all ſhips forſaken by the companies belonging to them.

3d. You are to inquire, make demand, and take poſſeſſion of all wrecks of the ſea, flotſons, jetſons, lagons, derelicts, ſhips and goods of pirates, deodands and all other droits, rights, duties and perquiſites belonging to the Lord High Admiral.

4th. You are, from time to time, to give notice of all ſuch ſhips, veſſels, goods and other droits and perquiſites aforementioned, unto our Advocate for the Admiralty and Procurator-General, to the end that the ſame may be proceeded againſt according to due courſe of law, and to pay all ſuch charges as ſhall be due for the proſecution of the ſame; and you are, from time to time, by yourſelf,

or

or by a Sollicitor appointed in that behalf, to attend the Court of Admiralty, to the end an account may be taken of all proceedings there relative to the perquisites of Admiralty.

5th. At all such time as commissions for examination of witnesses, and for appraisement and sales of ships or goods, shall be issued out of the Court of Admiralty, and relating to any of the rights of Admiralty, you are, by yourself or agents, to take especial care to see the same be duly put into execution, and returned; and you are likewise to take care that all decrees and orders of Court, wherein the said rights are concerned, be duly executed; and where any commission for appraisements and sales shall issue out for ships or goods brought into the port of London, you shall yourself see to the due execution thereof.

6th. You are to see that all sales be regularly and duly performed, and to take care that there be no more expended in waiters, appraisers, sellers, interpreters, attenders and others on such commissions, than is necessary for carrying on the service for the best advantage; and you are to inform

form yourſelf of the uſual rates and prices of any ſuch like ſort of goods as you ſhall find condemned as perquiſites, with reſpect to the condition of the ſame, to the end that all ſales may be the better managed for his Majeſty's advantage.

7th. You are alſo in the beſt manner you can, to inquire how many and what part of any perquiſites of Admiralty whatever are remaining in the hands of thoſe by whom they are payable; and you are to obtain from the heirs or the executors of the late Receiver all manner of public papers, concerning the perquiſites of the Admiralty, which they may happen to have in their hands, and to give a receipt for ſuch of them as you ſhall receive.

8th. You are to get an account of all ſuch ſhips and goods whatſoever as have been condemned as perquiſites of the Admiralty, and have not been duly accounted for, and alſo of the tenths of prizes; and having ſo done, to compare and examine the ſame with the ſums charged, and to ſet down in the accounts of the late Receiver General of thoſe perquiſites; and you are to inquire of all ſuch as have taken any ſhips

or goods at ſea without letters of repriſal, or have diſpoſed of them either abroad or at home, before the ſame were adjudged good prize by the Judge of the High Court of Admiralty, and you are to cauſe ſuch goods and ſhips to be proſecuted to condemnation, and the perſons offending to be proceeded againſt according to law; and you are to take an account of all bonds and recognizances delivered into the office relating to any Admiralty droits, and to examine which are forfeited, and to ſee the ſame put in ſuit.

9th. You are from time to time, as there ſhall be occaſion, to require all our Vice-Admirals to give up their accounts of all ſuch droits, duties and perquiſites as they have received, and to acquaint us with any abuſes, neglects, corruptions or encroachments whatever, that you ſhall find or underſtand to be committed by any Vice-Admirals or their officers, in the taking, collecting, ſeizing or embezzling, diſpoſing or meddling with any ſhips, veſſels, goods, merchandize, or any Admiralty droits, and to take ſuch courſe for the reformation thereof as may beſt conduce to the bettering and advancing the due rights and benefits

of

of the Lord High Admiral; and you are to acquaint us with any neglects, abuſes, corruptions and encroachments, that either have or that you ſhall find may be committed by any perſon whatever, to the prejudice of the office and perquiſites of the Lord High Admiral.

10th. You are at all times to have your accounts in a readineſs, and to give up the ſame whenever required by us; and from time to time, to pay ſuch ſums of money as ſhall be remaining in your hands, to ſuch perſons as ſhall be appointed; and you are by yourſelf or deputy diligently to follow all cauſes and matters to our Advocate and Procurator-General, as often as there ſhall be occaſion; and you are in general to attend, promote and proſecute his Majeſty's intereſt in all places and in all cauſes whatſoever, where either the rights or Admiralty juriſdiction are concerned. Given, &c.

Thurſday, September 4, 1777.

The WILLIAM *and* GRACE.

A DUTCH Jew merchant, who had reſided at Surinam and Euſtatia, claimed the ſhip and cargo as his property, which he ſwore it to be; and among other things ſet forth, that he had bills due to him, drawn by perſons at Philadelphia upon merchants in Holland; that they were returned proteſted; on which he went to Holland, and gave bail to his creditors, and then went to Philadelphia, where he was obliged to take Congreſs money, and with that purchaſed the ſhip and cargo, and was returning in it to Holland when taken. The ground of his claim was, that this was a trade of neceſſity, and not ſuch a trade with America as was prohibited by the act. But the Court was of opinion, that the act left no diſcretion to the Judges of the Admiralty; that all ſhips and goods, whether Americans or others, going to or coming from the rebellious colonies, after a limited time, were a forfeiture to his Majeſty;

Majeſty; that even cargoes remitted to ſubjects in England and Ireland, after a certain time, were confiſcable; and that this Dutch Jew could not expect to be upon a better footing than Britiſh ſubjects; that no ſort of trade was admiſſible; beſides it being againſt the colonizing laws of all Europe, for foreigners to traffic for and carry away the produce of their colonies; that, in a letter annexed to his affidavit, there was a proof that part of the cargo belonged to ſome other perſons. A diſtinction was taken between the caſe determined on the 29th of July laſt, in favour of a Mr. Baird, a King's officer, who came away with a few caſks of indigo for his ſupport, being baniſhed by the pretended government of South-Carolina, for refuſing to ſwear allegiance to them, and abjure the King, which was in evidence; as alſo the caſe of the Rev. Mr. Angus Macaulay, under the ſame circumſtances: alſo the caſe of the Polly was noticed, for that was a ſhip repurchaſed from the rebels by an Engliſh maſter, who had been taken by them; he loaded her with rice, &c. was in the midſt of Hopkins's fleet at Rhode Iſland, when the King's fleet appeared; he did

did not ſail up the river with Hopkins, or try to eſcape; and ſwore he intended, after carrying his cargo to Portugal, in order to ſave his bail, which he had given at the Congreſs Cuſtom-houſe to carry it thither, and not to any port in Great-Britain, to have come home to England; yet the ſhip and cargo were condemned, becauſe the ſetting up an intention would be liable, if admitted, to great colluſion.

The FRIENDSHIP.

Mr. Wells, late Marſhal of the Superior Court of Admiralty at Charles Town, was a claimant of ſome indigo. He came away in 1775, being driven from thence by force, becauſe he would not join an aſſociation againſt Government, leaving his daughter and family; ſhe left the colony a few months ago, and came on board this ſhip, having two barrels of indigo for her ſupport, and the ſhip was bound to Nantz. The Court reſtored the indigo claimed, as alſo one barrel in favour of a Mr. Millegan, late chief Surgeon of the King's garriſon in that colony, who was forced away at the ſame time. This indigo was brought over by his wife. Millegan came over with

with Government diſpatches in 1775. The Court ſaid, that it ſhould be careful how it gave ear to petitions, from which large conſequences might follow to defeat the act. Here were two officers of the Crown compelled to leave the province; their families made a part of themſelves, and the quantity brought over was very ſmall, and for immediate maintenance of the ladies: It was proved by the examination, that there were ladies on board; it was reaſonable, therefore, to take this caſe out of the rigour of the law; for as the Congreſs Governor permitted Britiſh ſubjects to take away their property with their perſons, it would be injuſtice in friends to rob them of what foes had ſpared: but all depended on circumſtances, and no one caſe can be a precedent for another. On the other hand, in the caſe of the Belle-Savage, the Court condemned one caſk of indigo, claimed by the ſame Mr. Wells, which was under the care of a paſſenger, and ſaid to be remitted by ſome perſons not named, his attorneys at Philadelphia, to ſome perſons at Nantz; and in the preparatory examinations, his claim was contradicted by the witneſſes ſwearing that the

the whole cargo belonged to perſons reſident in America. The danger of admitting theſe ſort of claims was animadverted upon, as the act might be entirely defeated; and all ſorts of people, under one pretence or other, let in to cover the trade of the rebel Americans.

The COMMERCE.

Governor Bull, late the King's Governor, was claimant of 16 caſks of indigo, which he brought with him; the Court reſtored the indigo. The Governor had an eſtate in the province, and this indigo he ſwore to be the produce of it. He ſtaid there ſome time after the Congreſs had deprived him of all authority.

The BETSEY.

This ſhip was taken by the Americans, and afterwards retaken by a King's ſhip. It was laden with Government ſtores, and the Navy-board conteſted the demand of Sir James Wallace for an eighth ſalvage; becauſe the act of Parliament only expreſſed, that ſalvage ſhould be given to the officers and mariners of any of his Majeſty's ſhips

of

of war, or veſſel, or boat, under his Majeſty's protection, for ſhips and goods of his Majeſty's *ſubjects* retaken from the enemy. It was inſiſted that the officers of the King's ſhips, having their pay, it was ſufficient, and they did no more than their duty in retaking the King's goods; but the Court held, that of common right ſalvage is always due for recaptures; that it would be very illiberal to conſtrue the act of Parliament narrowly, which was meant, by the policy of the legiſlature, to encourage all the King's officers to do their duty, by coupling the principle of intereſt with the principle of honour: that the pay was not, in moſt caſes of the ſervice, adequate to the riſk, danger, and fatigue; that private merchant ſhips, who never fought but where ſomething was to be gained, would be better off than the King's ſhips, if the latter were denied ſalvage; that in Queen Anne's war, the Winchelſea man of war being retaken by the Cheſter, the King's Proctor claimed the recaptured ſhip, and ſalvage was decreed to the Cheſter, in theſe eſpecial words, "According to law and cuſtom." It was ſaid by the King's Advocate Dr.

Marriott, that the King's ſtores are the public ſtores, voted and paid for by the public, of which his Majeſty has the application; that ſalvage had always been allowed, where any thing was recovered from an enemy; and that although the quantum of ſalvage had been floating, as to what the Courts of Admiralty allowed, at different times, before the prize acts of Parliament had fixed that quantum, yet it was always ſettled, that recaptors were to be rewarded according to their merit. The caſe of the Riſing States was quoted; a tranſport ſhip retaken by a King's ſhip, and adjudged about a month ago, when the Admiralty Proctor prayed reſtitution of the King's ſtores, paying the ſalvage; ſo it ſeemed ſingular and reprehenſible, that it now ſhould be made a queſtion by the Navy-board.

Thurſday,

Thurſday, October 2, 1777.

The SALLY,

Taken by the Letter of Marque SARAH GOLBOROUGH.

THE Court reſtored to the Hon. Edward Savage, Eſq; three caſks of indigo. He was on board with his ſon, and had been one of the Aſſiſtant Judges at South Carolina, and was driven away in conſequence of his refuſing the oath of abjuration of the King and Parliament, tendered to him by the New Carolina pretended government, the indigo being ſworn to be for his ſubſiſtence and not for trade. Reſtitution was alſo decreed to Colonel Probart Howarth of four caſks of indigo. This gentleman had been commander of Fort Johnſtone, appointed by Lord Amherſt, and was under the ſame circumſtances with Mr. Edward Savage. The claim of a Mr. Carne for ſeven caſks of indigo, and ſome bees-wax, was rejected. It appeared that the oath had never been tendered to him. He only ſet forth his apprehenſions, and

it was in evidence that he was to return to Carolina in twelve months. One of his bills of lading he had made out under cover in Colonel Howarth's name, which ſhowed that he thought his adventure might otherwiſe, if taken, be condemned. He had alſo left orders for it to be inſured for 500l. ſterling by the Carolina Inſuring Company. The claim of the reſt of the ſhip and cargo, by a Mr. William Savage, was rejected. The oath was never tendered to him. He only ſet forth his intentions and apprehenſions of being preſſed with the oath; but he had a clearance from the rebel Cuſtom-houſe, and had given ſecurity to the Congreſs by one Mr. Baker, reſident at Carolina, to perform the voyage to Nantz and back. A foreign ſeaman ſwore that he was ſhipped by the Maſter for that voyage out and home; and farther, Mr. William Savage had inſured both ſhip and goods with the American Company for 20,000 l. currency. His whole family were reſident at Charles Town. One Thompſon, a Scotſman, reſident at Charles Town, was ſaid by the ſeaman to have been reputed to be a part owner of the ſhip.

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As it clearly appeared, therefore, that Carne's and Savage's concern was a trading concern, ſtrictly within the prohibitory act, the Judge condemned Carne's and Savage's property. The rebel ordinance threatens the King's officers, after their being tendered with the oath, and being gone out of the province, with the charge of treaſon, and the puniſhment of death, in caſe they return; ſo that Carne and Thompſon had it in their power to return, not being officers, and no oath having been tendered to them.

There were claims of the King's officers on board, to whom oaths of abjuration had been tendered by the rebel government at South Carolina, and by two other claimants, who ſwore they came away under apprehenſions.

It was argued by the King's Advocate-General, Dr. Marriott, for the captors, that the queſtion turned on the admiſſibility of theſe claims under the prohibitory act. If it ſtood upon the letter, it was clearly to be anſwered in the negative; for that it was a general ſweeping law, and made no diſtinctions, except in a few caſes and circumſtances of time and place, none of which

which were applicable to theſe claims. That it was impoſſible to draw the ſtrict line when the act was made; the ſpirit of which was to ſtop the whole of the American trade. That indeed ſome few caſes had been ſince adjudged, in which lenity had been ſhewn to the officers of the Crown, in conſequence of the American ordinance having afforded a ground for ſome ſort of equity and latitude, in regard to the damnatory clauſe of the act. That if any thing could be found to juſtify the Court of Admiralty, in taking the liberty of expounding, or rather contravening, the terms of the act, in diſcriminating the innocent from the guilty, and relieving the numberleſs unhappy perſons ſuffering for their loyalty, and from their ſituation, under the general calamity of a civil war, he ſhould ſee the diſtinction with pleaſure. But the great danger to be guarded againſt was colluſion. A flood of claims and litigation muſt follow, and the door once opened, it would be like letting out a weight of water, which would run nobody can tell whither. It was therefore neceſſary that the Court ſhould regard ſuch

claims,

claims, even as Mr. Savage's and Mr. Howarth's, with circumſpection : although King's officers, they were to be believed only upon their own affidavits of the oath of abjuration being tendered to them, and no other witneſs proved that fact. Indeed, their properties were ſmall, and they ſwore it to be for their ſubſiſtence. It was not very likely that any of the King's officers would falſify their honour to cover rebel property; yet it was well known, that many, very many of the Crown officers who had been appointed in America, were landholders, and had families and connections there. How great ſoever their public duty was, yet the ties of nature, ſelf preſervation and intereſt might get the better. The language is obvious, " If you will preſerve my effects, I will cover your's." Colonel Howarth's name is abſolutely uſed by Carne in a bill of lading; whether with the Colonel's knowledge, or without it, does not appear. Whatever the Court might think to do with the claims of Howarth and Ed. Savage, on the ground of the deciſions lately in favour of Millegan, Mr. Angus, and Governor Bull's caſes,

caſes, yet Carne's and William Savage's claim could not be allowed. They were clearly trading concerns, and both inſured as ſuch, by a public company of inſurers (not of merchants on the Royal Exchange of London) ſet up by the rebel government, to encourage their trade with other countries, to the prejudice of this; ſo that the claimants could be no great loſers by the ſentence of condemnation; and the inſurers, inhabitants of the rebel colony, would be the true ſufferers; otherwiſe a reſtitution of the ſhip and cargo, in favour of Carne and William Savage, would be, in fact, a reſtitution to rebels. Theſe two men might return; for by their own affidavits it appeared, that they had taken no oaths, and only ſet up apprehenſions and intentions, a ground not to be admitted: beſides, they were contradicted by the ſhip's papers and preparatory examinations. Without being collaterally ſupported by them, no affidavit of a party intereſted can eſtabliſh his claim; it is the rule. William Savage was to return in a twelvemonth, as appears by a letter from one connected with his family; a reſident

Carolinian

Carolinian was ſecurity to the Congreſs for his performance of this voyage, and the ſeamen were ſhipped accordingly. A perſon reſident in the colony was alſo reputed to be a part owner of the ſhip. In the caſe of the Polly, a Maſter of one of the King's tranſports, taken by the rebels, bought his ſhip again, and having given bond to the Congreſs to return, he ſet ſail with Hopkins's ſquadron; when they ſtood away from Sir Peter Parker's fleet, he remained at anchor, and claimed protection, ſetting up his intentions to have only ſecured his own property, and to have evaded the enemy; this claim was however rejected. On the whole, the Advocate-General concluded, that if ſuch latitude were to be allowed, the prohibitory act would be defeated compleatly.

Dr. Bever went over the ſame ground, and obſerved, that Carne and W. Savage ſtayed ſome months after the publication of the ordinance, and that the fact of the oath not being tendered to Carne and W. Savage only ſhewed, that the Congreſs wiſhed to ſee them again; and that if this ſort of proceeding were to be allowed here,

people might come as ſpies into this kingdom with ſafety.

Dr. Harris, Dr. Calvert, and Dr. Wynne inſiſted, as Counſel for the claimants, that the principle was now eſtabliſhed, that notwithſtanding the words of the ſtatute, there is a favourable exception for claimants under circumſtances. That according to the late deciſions, if this ſhip ſhould be condemned, Carne's and Savage's wives might, on recovering the inſurance, ſafely bring home the inſurance-money. That Howarth's and Ed. Savage's caſes reſembled exactly the caſes of Governor Bull, Millegan and Angus. That the affidavits, ſo far as related to their property, were ſupported by the ſhip's papers and examinations; and as to their being baniſhed for not taking the oaths, the ordinance proves, that all the King's officers were to be driven out of the province, if they refuſed the oaths. [It muſt be obſerved, that the oath had been tendered to them, and the evidence that they had refuſed it ſtood only on the proof of their own affidavit.] There being no ſtanding interrogatory to this caſe of tendering the oath, nothing

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of that could come out as to this fact: they had ſworn it, and even that is not neceſſary in ſome caſes; for Millegan, Deputy-marſhal of the Vice-Admiralty, had been in England two or three years; his property was brought over by his daughter, and was reſtored: the oath was never tendered to her. Whereas a caſk of his on board another ſhip, bound to France, and by way of remittance, was condemned. The argument drawn from inſurance is not fatal to a ſhip; becauſe, in the laſt war, ſhips were not condemned, merely becauſe the inſurers were enemies. Yet every French ſhip almoſt that was condemned, was the condemnation of the under-writers of the city of London. There were great parliamentary debates about this; and the inſurers of each nation reciprocally protected each other's commerce, in ſpite of the politics of their reſpective courts. Beſides, William Savage proves himſelf indebted to this country; and Carne's family have been conſtantly reſident here, in Bartlet's-buildings, Holborn: he only went over to collect debts, himſelf a Middleſex Juſtice, and a

trader only by neceſſity, from having unfortunately his property in America, which he wiſhed to withdraw. The ſeaman ſwore only to hearſay about the property of the ſhip, an Italian, not acquainted with the Engliſh language; and the captors were in default, not to have examined the maſter, mate, and other mariners, according to the King's inſtructions and the regulations of the act of Parliament. On theſe grounds they prayed reſtitution.

Sir George Hay, in giving his ſentence, ſaid, that the act of Parliament was the rule to walk by; and the preciſe line being there drawn, ſome Judges might have thought it for their own eaſe and juſtification, that they ſhould admit of no exceptions, but ſuch limitations only as were expreſſed in the act; yet caſes had ariſen, which ſeemed to call for a humane interpretation of ſuch a general law. The prohibition was clear, that all ſhips and goods of the inhabitants of the enumerated colonies, declared to be rebellious, and all other ſhips going to trade, and coming from trading there, were to be confiſcated. That wherever there is trade, there is confiſcation.

tion. The violent ordinance of the pretended colony government, coming after the making the prohibitory act, has now afforded a ground for lenity in certain caſes. The King's own officers are all proſcribed by the ordinance. But it behoved a Court to be very circumſpect on the ground taken by the Advocate-General; the great danger of colluſions, and the difficulty of knowing where to draw the line. That ſuch officers as Governor Bull could not be ſuppoſed to have lent their names for the purpoſes of ſcreening the property of rebels; and as to other officers, the ſmallneſs of the quantity of goods for their ſupport, as well as the quality of the perſons, merited conſideration; and that he wiſhed the deciſions in the late caſes, as well as this, to be well underſtood in the world, that it might not be wrote over to America, "Only tender "your abjuration oaths to the old Crown "officers, or to perſons you may call ſuſ-"picious, they and their property may go "ſafe to England, and your's too, if they "will but ſwear to it. The Judge of the "High Court of Admiralty will reſtore."

This

This muſt not be. Intentions, apprehenſions, will not avail, nor even the oath being tendered, in all caſes. Where parties certainly cannot return on pain of death, it differs much from the caſe of thoſe who can return, and probably will. Carne's and W. Savage's caſes are already determined to be *trading* tranſactions in the view and object of the ſtatute. They are not Governors or Officers driven from their eſtabliſhments, but American inhabitants and merchants, inſuring with American inhabitants. Why inſure, or why borrow another name, if no conſciouſneſs of being liable to condemnation? and therefore I muſt condemn them. Perhaps ſome people may think I have gone too far already, in reſtoring any thing. I wiſh to be rightly underſtood; and I ſhall be glad to have the aſſiſtance of the King's Advocate. In fixing the ſenſe of an act of Parliament, open to many new circumſtances, ariſing every day in the courſe of this uncommon kind of war and rebellion, it is not eaſy to draw the line between equity and humanity on one ſide, and ſtrict law and a ſeverity meant to cruſh the progreſs of rebellion, and cruelties,

ties, on the other. If intentions and apprehenſions can be be admitted on the part of claimants, upon their own oaths, and in their own favour, then the act, prohibiting all trade and intercourſe with the American colonies in rebellion, will be a piece of waſte paper.

The HENDRIC *and* ALIDA,

A Dutch ſhip, laden with powder and guns, with foreign officers, going to the Provincial army, taken by the Right Honorable Lord MULGRAVE: *Reſtored by the Court.*

The KING'S ADVOCATE, Doctor MARRIOTT.

SIR,

THE queſtion is, whether the claims given for the ſhip and cargo are well proved, as being the property of the perſons claiming for themſelves and others, ſubjects of their High Mightineſſes? The points which I ſhall inſiſt upon for the captors are, that, in the preſent ſtate of the evidence before the Court, the ſhip cannot be reſtored to the claimants. I do not ſay it is to be condemned upon this evidence; but with ſubmiſſion that the Court cannot reſtore to the claimants; becauſe there is proof from the Mate himſelf, and from the declarations of Rouſman, the late Maſter and part owner, to Count D'Attems, that

that the ſhip was the property of loyal Britiſh ſubjects, taken off Antigua by an American privateer, and carried into St. Euſtatia: there it was ſold, as it is to be ſuppoſed, to ſome perſons; but the transfer of property, either at Euſtatia, or even in Holland, does not appear by any bill of ſale on board. It is a recapture, to the reſtitution of which a Britiſh ſubject is entitled whenſoever the original owner ſhall appear. It follows, therefore, that the ſhip muſt remain in *uſum jus habentium*, as a depoſit for the party who ſhall appear finally to be the real owner; and the claimants muſt go into farther plea and proof of their property, as claimed according to the directions of the act whenever the Court has a doubt.

I think if it ſhould come out, that the Dutch claimants have bought the veſſel, even for a fair and adequate price (which is much to be doubted) yet it would be a great queſtion, whether by the law of nations, and by treaties ſubſiſting between the two countries, ſuch a transfer is valid. This queſtion is a conſiderable one; I ſhall not go into it till it comes to be agitated;

I ſhall only adhere to the propoſition with which I ſet out in the opening, that the ſhip is not now proved to be Dutch property. I have ſaid, in a former caſe, that it is neceſſary to prove ſtrictly transfers of property; becauſe the poſition ariſes out of the nature of this uncommon war and rebellion. Many of our ſubjects at home, with almoſt all the other mercantile people in Europe, combine to render abortive the act of legiſlature for ſtopping all trade and intercourſe with the Britiſh American colonies in rebellion. Colourable and pretended ſales are the principal means whereby the trade of the colonies is protected. Without ſtrict proof the prohibitory act will be waſte paper. In the firſt ſtage of the preſent confuſions, this Court was lenient; a very little proof of a transfer was admitted, and it conſidered the prohibitory act of Parliament as made rather in *terrorem*, to bring back the colonies to their duty, than for a rigid execution. You thought, Sir, that you did not ſit there to conſider ſhips papers with the ſtrictneſs of conveyances and title deeds. But the prohibitory act has failed hitherto in the expectation of the framers,

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to bring about an early ſubmiſſion, and this conteſt ſeems to run on *ad internecionem*. It is time, in my humble opinion, that a leſs gentle doctrine ſhould be adopted: the deciſions and forms of law ſhould meet the neceſſity of the caſe, and the greatneſs of the object.

The matters which are to be judged of in every juriſdiction among civilized nations give ſhape to the forms of proceedings; it is for this reaſon I object to the preſent claim for its uncertainty of perſonal deſcription. I admit it to be in the forms hitherto uſed in a lawful war; but in order to prevent colluſive and fraudulent pretenſions at this ſingular criſis, I ſubmit it to the conſideration of the Court, whether inſtead of the claim being for A and B, and *others*, ſubjects of their High Mightineſſes, it ought not to be for A and B, the *true* and *ſole owners*, &c. &c.

For who are *others?* Engliſhmen, Americans, any perſons unknown, ſettled here and there, for the purpoſe of carrying on the American commerce, in defiance of every prohibition. *Others* may be John Hancock and Samuel Adams, if they have

but Dutch burghers briefs, according to the ideas of Dutch writers on the law of nations, who have formed it to their own commercial principles, and in derogation to the *jus gentium* of all the reſt of the maritime powers, as I ſhall obſerve more particularly. But as this obſervation upon the defect of the claims looks forward to the neceſſary reform of the practice in the future, rather than to any objection fatal to the preſent claim, I ſhall not preſs the obſervation farther than to inſiſt, that there ariſes upon the face of this claim, compared with the evidence in preparatory, a ſtrong internal preſumption againſt its own veracity. Rouſman, who came in this ſhip from Euſtatia to Amſterdam, is proved, by Captain Klok himſelf, to be a third owner of this ſhip, with Rittenberg and Schimmel of Amſterdam. He does all acts of owner-ſhip, and ſhip's huſband: yet why is his name omitted in the claim of the ſhip? Why did ſo great an interval of time elapſe as from the ſeventh of Auguſt, when the ſhip was taken, and the fourth of November, when the cauſe was ready to be heard? At ten at night, on the third of November,

vember, the agent of the claimants Schimmel and Rittenberg, entered their claim. Is it not natural to ſuppoſe, that Rouſman was conſcious that he was himſelf a Britiſh American, and not a true Dutchman, and that his and his partners title to the ſhip could not be finally maintained? otherwiſe why were they ſo difficult to be perſuaded by their Counſel to appear at laſt, and claim? and even then Rouſman was omitted in the claim. It is eaſier for claimants to preſent bluſtering memorials to the King's Miniſters, than to advance true facts: but it is very unjuſt to complain in a Court of Juſtice of delays, which the claimants themſelves occaſion. When I look at that chair, and recollect how it has been filled in former times, and how it is filled now, I wiſh the world to know that the rapidity with which cauſes of prize and forfeiture have been heard in this Court is without an inſtance in any former wars, not another principal conteſted cauſe remaining upon the Regiſtrar's books; at the ſame time the ſerioufneſs, the deliberation, and rectitude, I may ſay too the humanity of the deciſions, does honour, Sir, to that chair, and to a

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profeſſion more or leſs miſrepreſented frequently elſewhere, in proportion as it is little known or regarded.

We were ready to have heard this cauſe *ex parte* long ago: inſtead of ſubmitting to a legal proceeding, every way has been tried by the Dutch claimants in another place to obtain reſtitution. However, they are now at laſt induced to enter into a diſcuſſion of their rights in the proper place.

As I object to the reſtitution of the ſhip, ſo I agree to the reſtitution of the cargo, ſo much as is innocent merchandize; and in this perhaps there is very great lenity on the part of the captors, becauſe the conſignors and conſignees are not proved to be the real owners, and we only except to the ſwivel guns and powder, and whatever arms and other military ſtores may be found on board; we pray that the Court will decree in the ſame manner as was done in the late caſe of the Twege Broders, that they ſhall be ſold to his Majeſty's Government at a fair valuation, by merchants, to be named on each ſide; and laſtly we pray, (what indeed will follow of courſe) that juſt cauſe of ſeizure and expences

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may be pronounced againſt the claimants. I know of no ſituation of reſponſibility in the public ſervice more diſagreeable than that of the officers of the Navy, if when acting according to the beſt of their ideas, and ſo far as they can be ſuppoſed to underſtand acts of Parliament, treaties, and the *jus gentium*, actuated by the principles of honour and of duty for the ſervice of their country, and in obedience to his Majeſty's inſtructions, they ſeize ſhips of any foreign ſubjects, under the ſtrongeſt ſuſpicion of being either the property of enemies, or going to their aſſiſtance, they are liable, in a court of juſtice, to heavy expences, damages and demurrage, as inſiſted by the claimants to-day. In arguing therefore this cauſe, I cannot do better than to follow what I conceive to have been the ideas of the noble Lord, at the time of the capture, upon his detaining this ſhip, and bringing her in for adjudication. As he is a man of bravery and honour, ſo he has too much prudence, and too diſtinguiſhed an underſtanding, to have detained a ſhip and cargo belonging, as it is aſſerted, to the ſubjects of the Dutch States, if he had not found the

the moſt ſuſpicious circumſtances of rebel property and hoſtile intentions towards this country.

There can be very little difference (although the difference was urged in the late caſe of the Pandora) between detaining a ſhip and bringing her in for adjudication; the latter follows neceſſarily from the firſt: For how can the ſtopping, ſearching, or detaining for any time, be juſtified, but by preſerving the juſtificatory evidence in a judicial way? The appearance of the veſſel, her arms and crew, the paſſengers and powder, together with examinations taken on board by Lord Mulgrave, were reaſons to him for ſeizing and detaining; but he can only be legally juſtified according to act of Parliament by the examinations taken in præparatorio, and by ſhips papers judicially brought in, and which papers every captor is bound by the act of Parliament and the King's inſtructions to ſend in with their prizes.

The firſt object which ſtruck the attention of the Captor was the built of the ſhip, *confeſſedly*, upon *evidence*, Britiſh American. That the being American-built is a reaſon

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at large for ſeizing and detaining a ſhip, on that ground merely, we do not contend; but in the preſent ſtate of American commerce it is a very ſuſpicious circumſtance, which juſtifies the ſtopping and inquiry. It is very true that American ſhips are a common object of trade over all Europe, but it is equally true and well known by all perſons acquainted with Holland, that the Dutch are the great ſhip-builders, as well as they are the carriers for the reſt of Europe. They build for themſelves, and never buy, except the Bermudas built ſwift ſailing ſloops to carry on their trade to the Spaniſh main, and to eſcape the guarda coſtas. This ſhip, it is agreed, as one ſays, is Boſton built; another more generally ſays New-England built. But the great ſuſpicion was, that ſhe was armed; and had on board not only powder, guns, and naval ſtores, but five military officers on board; one a Dutch Cornet, with commiſſions doubtleſs, and diſpatches, but now deſtroyed. Dutch officer and all going avowedly to ſerve in the provincial army.

Count d'Attems ſpeaks out like a man of honour, without ceremony, and ſays, that

this veſſel had been met with by his Majeſty's ſhip Foudroyant; that the maſter, Klok, was in a great fright, and told Draveman, another officer, in his hearing, that he (the maſter) had ſome papers which he did not chooſe ſhould be ſeen; and if Draveman would give him his papers he would conceal them, where neither the ſeamen nor any one elſe ſhould find them out.

No ſuch papers were found by Lord Mulgrave, nor the diſpatches which the maſter had, and for the taking of which on board, leave appears to have been granted by the Dutch Weſt-India Company to the maſters and owners.

Here then is a clear proof of ſpoliation. In this caſe the *jus gentium* is condemnation: but the lenity of a Britiſh Court of Admiralty, in its uſage hitherto, has never gone that length; altho' the Dutch ſubmitted to it in regard to France, when the Dutch States publiſhed themſelves, in their Gazettes, by their own authority, the famous French *Memoire Inſtructif*, of the 8th July, 1756, in which regulations (which the neutral powers were called upon to obſerve) this, and many other like cauſes of condemnation,

condemnation, were laid down as the law of nations; and the Dutch States never remonſtrated againſt that famous piece.

But, Sir, this ſhip was an *armed* ſhip; and for what purpoſes it is plain; againſt this country. The ſize of the ſhip deſerves animadverſion; for, by the Dutch ſea-brief, it appears, that the veſſel was entered at 43 laſts, that is, about 60 tons: we will, however, admit 100 tons. 15 tons of powder is avowedly part of the cargo, about a 6th part of the whole cargo, beſides the 21 ſwivels. But this ſmall veſſel was mounted with 8 carriage guns and 4 ſwivels, 100 ſhot for thoſe guns, and two barrels of powder. Every body who knows the leaſt of ſhipping, muſt know, that ſuch a weight of metal upon deck muſt render the ſituation of ſo ſmall a veſſel extremely hazardous in tacking, or in a gale of wind. Here were but four ſeamen, two boys, the mate and a maſter, to 12 pieces of ordnance: who can doubt but they were to have been ſerved by the five officers and their two ſervants, with Frankiln's commiſſion in their pockets? Theſe men, adventurers, who make a trade of war, and are ready to cut throats

for any ſide that will employ them, would have made their fortunes by a prize of ſome weak Engliſh veſſel: but they were unlucky in meeting with ſuch a ſhip as the Ardent, and with a commander as good as his ſhip. The very reaſons given, by the maſter and mate, for arming the ſhip in this manner, are too ridiculous not to ſee againſt whom theſe arms were intended. To defend themſelves againſt the Turks? they might as well have ſaid, to defend themſelves againſt the Marattas, near the iſland of Euſtatia.

The words of Rittenberg, in his letter to Jan Schimmel, are, "We have mounted "our brigantine de Hendric and Alida with "6 three or four pounders, *Engliſh cannon*, as "alſo 16 ſwivel guns; by reaſon that it be-"ing ſummer-time, we are afraid of the "Turk. Praiſe God this day." He does not ſeem to know the number of guns on board a ſhip he calls his own, and they are Engliſh. The maſter and evidence fix a larger number. But theſe guns were alſo pretended to be for ſalutes. Seven pieces were to be fired at the caſtles of St. Euſtatia. There is an etiquette about ſalutes; and Governor De Graaf is famous for his polite-

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neſs to rebel American veſſels; he receives and returns their compliments. I hope, in return, no credit will ever be given in this country to any papers or documents, with the ſignature of a man ſo publicly an enemy of this country. I am ſorry that he appears, by ſome of his letters, to be ſupported by the Dutch Government, in defiance of the repreſentations of ours. One may truly ſay of him, and the reſt of his fraternity at St. Euſtatia, purchaſers of Britiſh ſhips, they are receivers of ſtolen goods, knowing them to be ſtolen.

Although one ſet of inſtructions, dated 19th July, orders Capt. Klok to ſalute the fort with ſeven guns, yet another ſet, dated 18th July, orders him to be very careful of the gunpowder and cartridges in ſaluting caſtles, and not to fire any guns except upon places where it is neceſſary. It is uſual for foreigners to ſalute forts, and they are complimented in return with much ceremony; but it is not uſual for the ſubjects of the ſame ſtate to ſalute their own forts, or to be ſaluted. Can it be ſuppoſed that a Dutchman, in a ſhip or a fort, would waſte an ounce of powder upon a Dutchman? They

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are better œconomiſts. As to the paſs, it is not a true one. The Maſter is plainly a prevaricator. When examined upon the firſt ſet of interrogatories, he ſwears that he never before took any oath, or depoſed that the ſhip was the property of Dutch owners. Upon the ſecond ſet of interrogatories, he ſwears that the paſs, or ſea-brief, was obtained upon his oath or affirmation.

But the Mate ſpeaks out, and ſays that he ſigned his name to the paſſport by the *Captain*'s orders, [he does not ſay whether by Captain Rouſman's or Klok's orders] but that he cannot ſay whether the ſaid paſſport or ſea-brief was obtained upon the oath or affirmation of the perſons therein deſcribed, or whether it was delivered to or on behalf of the perſon or perſons who appear to have ſworn or affirmed thereto, without their having ever in fact made any ſuch oath or affirmation. This is wonderful! he ſwears that he ſigned the ſea-brief, and yet does not know the contents, nor upon whoſe oath it was obtained.

But on the face of the ſea-brief introduced, neither the Mate's nor Klok's name is to be found. This is the common trick;

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one man ſwears and ſigns, and another uſes the paſſports; ſo that the Dutch collude even againſt their own Government, and defraud it of its duties by taking out falſe paſſports and falſe admeaſurements.

In regard to the cargo; here is a very large quantity of powder and ſwivels; other arms are ſuſpected to be concealed. It is true ſome Jews appear intereſted, but it is only *in part*, and the reſt of the powder, as well as the guns, for what appears to the contrary, may be for the account of the Congreſs: unleſs it can be *eſtabliſhed* that the conſignees are the *owners:* but what is laden *to order* cannot be theirs; it is more likely to be the property of the conſigners and laders. But if the cargo is not expreſſed to be laden on their account and riſk, conſidering the preſent nature of the commiſſion trade, a further proof of property muſt be expected, if the claimants will not agree that there was juſt cauſe of ſeizure and expences againſt them, for defect of documents. Whatever may have been the rules of Admiralty Courts formerly on this ſubject, thoſe rules were founded on the ſtate of commerce at that time.

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The middle-man, (the factor, the ſeller, buyer, and lader by commiſſion,) was not ſo well known a character as it is now. All buſineſs is now tranſacted by a third man; and more than three parts out of four of the perſons who are ſtiled merchants on the Royal Exchanges of London and Amſterdam, are agents for other men ſettled on different ſides the water. You ſee by the letters in this and other cauſes ſo frequently read in this place, how greedy people are after commiſſion buſineſs, even to get it away from one another, becauſe in this ſpecies of commerce there is all profit and no riſk; and the ſame men can contrive to be buyers and ſellers at their own prices, and ſet the market. No wonder then that all the mercantile people of Europe puſh for the agency of the American commerce, by commiſſion. There is not one perſon examined who will ſwear to the property of the claimants of any part of the cargo; nor one paper to prove their property, excepting an intereſt in a ſhare of the powder with the Lobos and Mendez, and a letter of Crommelin and ſons to Meſſ. Milner and Haynes at St. Euſtatia,

Euſtatia, that they had ſhipped, on their account and riſk, goods on board this ſhip, amounting to Dutch money 22891-15. But this is not ſo deſcribed as to be capable of being diſtinguiſhed from the reſt of the cargo; and who are Haynes and Milner but Engliſhmen now at Euſtatia, for the occaſional purpoſe of carrying on the American trade, in defiance of the laws of their country, which they would evade if poſſible? Who is Donaldſon? Who is Curzon? Who are the reſt of the Euſtatia correſpondents of the traders in Holland, but upon the ſame plan of adventurers?

The only argument we mean to draw from this uncertainty of the general property of the cargo is, that under the declaration of the Dutch Weſt India company, viz. That *nothing* on board was for *the uſe of the iſland*, and all the crew ſwearing that none of the powder or guns on board were for the uſe of the garriſons or fortreſſes of the States of Holland, a preſumption juſtly aroſe in the mind of Lord Mulgrave, and muſt ariſe in the breaſt of the Court, that this whole cargo had a deſtination beyond Euſtatia, where the ſhip

only was intended to touch; for it is clear, from the evidence of Draveman, the Dutch military officer, that Captain Rouſſman, a principal owner, and late maſter, declared to him, that the veſſel was to go on to New England, and there lade with tobacco, rice, and indigo, and then return to Amſterdam. In theſe cargoes it is univerſally known the Congreſs make their remittances. And will any body ſay this is not a contraband trade to his Majeſty's colonies, againſt the law of nations and treaties, whereby all the other maritime powers have ſhut up the trade of their reſpective colonies, and endeavoured to confine it to themſelves? But the Dutch poſſeſſed of a barren rock, and authoriſed by their Directors to take whatever goods they ſhall find there, avowedly ſet their faces againſt this compact of all the other powers. From this place, as a general *entrepôt*, they invade the commerce of France, Spain, England and Denmark, and are as often condemned as the Spaniſh guarda coſtas catch them. All that the Dutch States ſay, is, that merchants cannot be hindered; they are a ſet of people independent of all

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the world, and they trade in this way *ſuo periculo*, at their own riſk; and ſo we ſay they *do now*. It will be aſſerted, that the Dutch have a right to carry what they pleaſe to their own iſland; but it may be anſwered to that, " the Dutch Company certify, that none of the articles on board this ſhip were for the uſe of the iſland." I deny the propoſition of right taken in its largeſt extent, and inſiſt that they cannot aid the King's rebellious American ſubjects through the medium of their own iſland. The condition of the iſland of St. Euſtatia is notorious to all the world; and the letters on board this ſhip, and every other Dutch ſhip that has been brought in for adjudication, prove the uſe that is made of the iſland. Our own merchants, as well as the Dutch, are concerned. The ſpirit of commercial adventure has ſeized all the world.

The buſineſs of the Colonies, and the aſſiſtance with arms and ammunition, is not only confined to Dutchmen, Portugueſe-Jews and Smouches: all Europe traffics through the medium of St. Euſtatia; and its barren rock is become under the direction of a Governor, who is an enemy to this coun-

try, a magazine of arms for enabling the American Colonies to ſupport their aſſerted independence. Spain has vaſt territories, fortreſſes and garriſons. France has very valuable iſlands; they muſt have troops and garriſons. The Dutch have a rock, and a caſtle for ſalutes; by this they would monopolize the trade of all America; and though allies of this country do every thing they can to it's ruin. The Dutch Weſt India Company, at this criſis, look with greedy eyes upon all America as their own; their Directors are chiefly Members of the States. The Amſterdamers take the lead in the Council, and they are the great manufacturers of gunpowder for all Europe, I may ſay, for the world; yet a true Dutchman muſt lament this conduct inconſiſtent with the true intereſts of Holland; ſuch a one regarding the permanency of his own ſtate, *vis à vis* all the neighbouring powers at home, who can cruſh it in a moment, muſt think that the avarice of mercantile adventurers is not to be gratified, while the very exiſtence of Holland may be in danger. For whenever Great Britain ſhall loſe her weight in the ſcale of Europe, Holland muſt fall.

It appeared in the caſe of the Twegee Broders, that 150 per cent. was made by trading with the Britiſh colonies. Can a nation of merchants reſiſt 150 per cent? We have already laid before the Court the letters which are addreſſed, under cover, to Ruſſel, to Levinus Clarkſon, of Charles-Town, South Carolina, Chupp and Bourdoin at Virginia; what need we more to ſhew the courſe of the trade, where it centers, and the neceſſity of checking it? But flaming memorials are dictated by American agents, and preſented to the States; and his Majeſty's officers, of the firſt character, as men of honour, of probity, are charged with having broken bulk. If memorials only ſtated true facts, they would be duly conſidered; but let thoſe merchants who deceive their own government, and try to raiſe the ſpirit of diſſention between two friendly powers, whoſe great intereſts are inſeparable, look well to their conduct.

This Court has power to puniſh offenders againſt the King's inſtructions and the law. I can take upon myſelf to ſay, that very uncommon care has been taken to prevent an undue rummaging and ſearching of foreign ſhips.

Inſtructions

Inſtructions were never before in any war carefully drawn and printed for the conduct of his Majeſty's commanders, that they might not be led, from ignorance of their duty, into an injury of themſelves and others; and it is in the power of every foreigner upon this head to do himſelf juſtice.

In this Court there is a ſpecial interrogatory, the fifth of the firſt ſet of additional ones, as follows:

"Was bulk broken during the voyage in which you were taken, or ſince the capture of the ſaid ſhip; and when, and where, and by whom and by whoſe orders, and for what purpoſe, and in what manner?"

If this interrogatory were not ſufficient, claimants may make affidavits of the fact; but to this interrogatory the Maſter and Mate anſwer, "that bulk was not broken during the voyage in which he was taken, nor after, to his knowledge."

The anſwer was the ſame in the caſe of the Dutch ſhip the Pandora, which was lately adjudged to be reſtored.

In the laſt war there were Dutch maſters who pilfered themſelves, and laid it upon

Engliſh

Engliſh cruizers, and Holland echoed with cries of the injuſtice of our proceedings, as they pretended. Who are the men who dare to circulate? to affirm theſe falſities at this time of the day?

For the honour of this Court and its practitioners, for the honour of this nation, I wiſh all the world to know what our proceedings are; they are ſuch as are authorized by the moſt equitable uſage of the law of nations. The principle of condemnation in the Court of Admiralty is in favour of every claimant; it is the language of the divine law of ſcripture,

"Out of thine own mouth will I condemn thee, O mine enemy."

By your own teſtimony you ſhall ſtand or fall; prove your real property, take it, and have it. Yet if you will ſail the ſeas in a *navire maſqué*, in the breach of the peace of the law of nations, and cannot produce upon the firſt view true unequivocal documents, you ſhall be ſtopped; you ſhall be brought in for a more ſtrict judicial examination; and if you ſhall be found deficient, as a warning for your future conduct, the ſeizure and detection will be juſtified,

tified, and you will be condemned in the expences.

It is on theſe grounds therefore, Sir, I renew my firſt motion againſt the Dutch claimants to detain the ſhip for farther proof, as there is reaſon to believe her to be a re-capture, the property of his Majeſty's own ſubjects; to reſtore ſo much of the cargo as ſhall appear harmleſs, ordering the guns, powder, and military ſtores, if any, to be ſold to his Majeſty at a fair valuation and appraiſement, by commiſſioners, merchants to be named on both ſides, and approved by the Court, as was done in the caſe of the Two Brothers, and to decree expences in favour of the captor, and JUSTIFY LORD MULGRAVE.

Dr. Harris, Advocate for the Admiralty, went over the ſame ground as the King's Advocate. He inſiſted, that the ſhip could not at preſent be reſtored, but muſt remain till the property ſhould be clearly made out; that the powder ſhould be ordered to be ſold, and conſequently the whole cargo unladen under the act of Parliament; ſo that the contents might be known, and probably the true papers appear. He particularly obſerved,

obſerved, that the treaty of 1674, which altered the principle of infection, and derogated in all reſpects from the common uſage and law of nations, is now admitted not to extend to the privilege of carrying freely the goods of enemies, in the caſe of hoſtilities between Great-Britain and her colonies, which could not be an object in view of that treaty; therefore whenever the ſubjects of any powers in friendſhip with Great-Britain now attempt to carry contraband goods, the law of nations reverts to the old footing previous to the treaty, and the doctrine of contraband *infecting* the reſt of the cargo may take place; to which the exporters make themſelves liable by their own act; the only true and effectual way to ſtop ſuch a commerce, and to puniſh ſo much perfidy, being a confiſcation without diſtinction of the cargo, whenever warlike ſtores are found on board; that all the books of the writers upon the public law of Europe, Dutch, French, Italians, Germans, and others, are all full of the doctrine of infection.

To theſe arguments on behalf of the captors, it was anſwered, on the part of the claimants, by Dr. Calvert, that the claimants

looked upon their caſe to be ſo clear, that the Court would, on the firſt face of the evidence, reſtore *ex officio*, although no formal claim was made: that Rouſman, Rittenberg, and Schimmel, having done acts of ownerſhip, muſt *therefore be preſumed* to be owners of the ſhip; beſides, it had been ſixteen months in their poſſeſſion; that in many caſes, determined ſince the preſent troubles, bills of ſale had been conſtantly called for by the Advocates for the captors, and as often had it been ſaid by the Court, that they were not neceſſary to be produced. He truſted that the determination would be the ſame again; for that as a bill of ſale is the title deed of a purchaſer, ſo it is natural and prudent that he ſhould keep it in his own poſſeſſion, and not hazard it on board a ſhip.

As to the voyage, all that Rouſman ſaid was, that *he was* to have gone to New-England to bring back tobacco; but it muſt be *ſuppoſed*, that after Klok was appointed maſter, his deſign was changed. But will any body pretend that this country has a right to ſtop the commerce of all the reſt of Europe, and to ſay, you ſhall not buy the goods of our enemies? The ſubjects of other

nations

nations have a right *indirectly* to ſell arms and gunpowder, which are merchandize as well as any thing elſe that is an object of commerce. There was no queſtion of that: that nothing appeared upon the whole face of the evidence that there was any property of the rebels on board this ſhip, or that any of the cargo was to be delivered for their account.

Dr. Wynne. The claim is objected to, with a view rather to the future practice which is propoſed to be reformed, than with any ſolid objection for the preſent. It is in the form always uſual in former wars. If any other owners, not named in the claim ſpecifically, appear in the evidence, they ſhall have the benefit as the ſubjects of a foreign ſtate. The Court muſt not go out of the way on the ideas of reformation. *Others* in the claim mean Rouſman, or any others who may turn out owners upon a view of the whole evidence; for a maſter, who is commonly the claimant, or an agent, may not know all the owners: ſo Klok did not know all the owners of the cargo; *he could not* ſwear to any of them, for the plaineſt

reaſon, becauſe he did not take the command till eight days before he ſailed.

As to the delay of giving in the claim not till the night before the cauſe was ready to be heard, it was indignation; juſt reſentment on the part of Dutch ſubjects: they ſaid, What uſurpation is this? Are we not to trade to our colonies? It was thought the captors would not dare to make a point of an aſſertion to the contrary. Conſignees and conſignors to order have always in former wars been held to be owners; but here is a clear preſumption in favour of Schimmelin and the Crommelins, Hopes, and others, Dutch ſubjects. Domicility has ever been held the rule to regulate the character of citizenſhip all over the world. It is true, on the firſt appearance *the bills of lading do not mention on whoſe account and riſk*; but the gentlemen on the other ſide have not attended to the letters (which have been ſince brought in by the claimant opened). Theſe letters make *ſo many of the goods* as are *therein named* to be for the account of perſons who are Dutch ſubjects at St. Euſtatia. As to the voyage to New-England, it is only the hearſay evidence of Drayeman. The

crew

crew were too few to man ſo many guns. Could they, or thoſe who were on board, have hoſtile intentions? Clearly not.

The ſhip was built in England; but will the built juſtify a ſeizure? If ſo, we may ſeize half the ſhips that ſwim: for ſhips are as much an object of trade as any other commodity; the gunpowder is for the account and riſk of the Lobos and Mendez. The law of ſtopping Dutch ſhips on any account muſt be denied; for, by treaty, if they do but ſhew their paſſports, they are not to be detained, much leſs to be brought in for adjudication, and rummaged to find evidence out of their own papers.

As to St. Euſtatia becoming a general mart at this criſis, it cannot be otherwiſe of neceſſity. It is a port open for all the world. If you refer to your gazettes, 162 rebel ſhips have been taken by the King's cruizers; many have been taken by your letters of marque: they and their cargoes muſt be diſpoſed of ſomewhere; it is impoſſible to bring them home. Do you not buy powder of the Dutch in Europe? Do not we uſe a great deal, and conſequently want a great deal in America? It is true, that powder carried to

a market may ultimately get to the rebels; but in the laſt war an ultimate poſſible declaration never was a ground for condemnation. If you can catch the ſhip Jalouſia, and that is loaded, as it is ſaid, with arms for the Americans, take her if you can, and try whether ſhe will not be confiſcable.

As to carrying letters or paſſengers, a foreign ſhip is not liable to confiſcation for that; the owners know not the contents of letters, nor the characters and intentions of mere voyagers. The caſe of the Two Brothers was a caſe very diſtinct from this of the Henric. Here the powder is laden by permiſſion of the Dutch Weſt-India Company; there it was laden on board after the ſhip had cleared out from the quays, and had fallen a great way down the river, and was entered in the ſhips under the colourable name of merchandize. Here the lading is public, and the gunpowder is expreſſed in the permit and in the invoice. [Reads a paper, part of the depoſitions in the cauſe of the Twegee Broders.]

Bills of ſale have never yet been inſiſted on by the Court. In the caſe of the Three Siſters, lately the argument of the want of a bill

bill of ſale was urged, and rejected. [Reads a paper, part of the depoſitions in the cauſe of the Three Siſters.]

Clandeſtinity and defiance of the Dutch placart was the ground of ordering the powder to be ſold in the caſe of the Twegee Broders. But as to the doctrine of infection, it is too antiquated to be revived, and too dangerous to be put in practice. The maſter ſpeaking to Draveman about concealing the papers, *when the Foudroyant appeared*, is only ſwore to by D'Attems. Draveman himſelf ſwears, that no papers were torn or thrown overboard, concealed or attempted to be concealed. Laſtly, the maſter's denying that he appeared perſonally, and ſwore to the paſs when it was obtained, is a matter which muſt ariſe from his miſunderſtanding the interrogatory, for his name is to it, and the engagement to obſerve the rules. And he poſitively ſwears, on a ſecond examination, that he did perſonally appear and take the oath requiſite for obtaining the paſs. Therefore on the whole the captor has been very raſh, and ought to be condemned in coſts, damages and demurrages.

The King's Advocate, Dr. MARRIOTT, *in reply.*

SIR,

IF this trade is not ſtopped, it is in vain that we contend with America. We may uſe the words of the claſſic,

Tu pulſas: ego baculo tantum.

You hit hard blows; we only (in the ſchool-boy phraſe) *fend off, and bully.* Then it is but too true, that we are at war openly with America, and ſecretly with all the world beſides, to very little purpoſe.

My learned neighbour has adopted the indignation of a Dutchman. I have heard of indignation making an invective, a poem, or a ſpeech; but I never yet heard of indignation making a claim for a ſhip and cargo after three months ſilent acquieſcence. I thought a Dutchman had no paſſions, but that ſort of feeling which ariſes from knowing the difference of profit and loſs, and the vexation of being croſſed in their mercantile intereſts. It was not indignation, but contempt for this Court, I do not ſay for this Government, that made the claimants wait ſo long before they would

ſubmit

ſubmit to appear judicially. They were adviſed by ſomebody to hope for reſtitution by bullying; but could they reaſonably hope for ſucceſs? When they came to talk with their counſel, they learned a better leſſon. "Claim nothing, have nothing; prove every "thing, have every thing." Did they expect, Sir, that you were to reſtore nobody knows what, to nobody knows whom? and to hear the whole cauſe *ex parte*?

As for the pretended acts of ownerſhip, on which ſo much ſtreſs is laid by the counſel for the claimants, they muſt be denied to be proofs. A man who ſteals my watch, wears it as his own; he pawns it, or he ſells it. Theſe are acts of ownerſhip; do they prove him to be the real owner? and what are theſe Dutchmen who deal in the purchaſe of the ſhips of the King's ſubjects piratically taken?

"Bills of ſale are the title-deeds of the purchaſers," ſaid one gentleman; for that very reaſon, we ſay, produce them. Plead them, prove them, is the anſwer.

But, it is ſaid, the bill of ſale is in the cuſtody of the buyer." Does not every one know, that in mercantile tranſactions and

correſpondencies, there are always duplicates? If places are at a great diſtance, there are triplicates. Why was not this document on board the Henric? "They have never been required by the Court yet," ſays the other gentleman. It is high time they ſhould.

It is ſaid, the ſhip was known by the Mate theſe ſixteen months, under no other name than the preſent. Is it not public what arts are uſed to cover theſe purchaſes? Ships are new-named, altered by painting, papers changed, and crews diſcharged, and the ſhips ſold with rapidity by American captors. In the preſent confuſion of things and perſons, the Britiſh merchant and loyal ſubject in America or in Europe, often knows not where his ſhip is carried, nor in whoſe hands ſhe is. He himſelf may be in the power of the rebels: yet, whenever he ſhall appear, he will be intitled to his property. Time cannot avail againſt the *jus poſtliminii*, any more than againſt the treaty; and more eſpecially when his ſhip falls again into the poſſeſſion and is under the protection of the laws of Great-Britain in the

High

High Court of Admiralty; the Britiſh owner has a right to reclaim her as a recapture.

In regard to the voyage, the gentlemen avoid that; becauſe they ſay Rouſman only was to have gone with this ſhip to New-England. If Rouſman was to have gone to New-England, does it not follow clear that Klok was to do ſo too, whom Rouſman, a third part owner, appointed Maſter in his own room, but eight days before the ſhip, being completely laden and armed, ſailed from the port of Amſterdam, with a Maſter inſtructed "to behave as a *brave* Captain "ought to do," and to take further orders from Burch and Haynes at St. Euſtatia. We deny the whole property of the powder to be proved. The Jews, Foa at Bourdeaux, Lobos at Amſterdam, and Mendez at Nantz, are intereſted *in part*. For the owners of the reſt there is a dead ſilence.

As to the evidence of hearſay, it is good. The *auditus ex auditu* is the weakeſt ſort. But evidence to a declaration of a Maſter, of an owner, of a party concerned, is an evidence of a fact: and it is concluſive, if it is not controverted; and Count D'Attems,

though a ſoldier of fortune, is a man of honour, and his evidence inconteſtable.

In regard to the caſes mentioned, it is very unfair, in this caſe, as was done in the Pandora laſt Court by the ſame gentleman, to bring a ſcrap of paper out of old briefs into a Court in another cauſe. If this is allowed, we muſt read the whole context, and all the evidence in thoſe cauſes; fight all our battles over again; and ſo we may talk down that clock. But if my memory will ſerve me, in the Twegee Broders, although ſome part of the powder was put on board clandeſtinely, yet the general cargo, and a very great part of the powder and arms eſpecially, were entered and cleared out as merchandize, at the Weſt-India Company's quays and at the cuſtom-houſe; and part of the powder was put on board when the ſhip was in the ſtream of the river, the reſt when ſhe was fallen a great way down: I am ſure that was the evidence. The Dutch placart is very artfully worded, and calculated for evaſions, and being made only for a year, and not being renewed for an interim of two months, the Dutch, at the time of lading the Twegee Broders, ſeized the opening for their trade,

and

and loſt no time to ſupply the call for powder and arms in America.

The Admiralty ſingle paſſport, No. 1, is the common paſſport which grants no ſpecial permiſſion for the powder.

The bill of lading for this powder, No. 10, is only made out in the name of *merchandize*; and ſo are the *fright* liſts, No. 5, ſigned by the Weſt-India Company's clerk, *upon which* the permit was *afterwards* obtained, and the word powder foiſted in.

As to reaſonings taken from caſes in the laſt war, gentlemen who delight in being caſe-mongers, and ſtring their precedents as boys do birds eggs (and we all know that for an argument ſake, one bad precedent is as uſeful as a good one) may go burn their memorandums. The caſe of the Dutch was very different trading with the ſubjects of France and Spain, and now with the King's rebel ſubjects. They were upon an equal footing of friendſhip with France and Spain as with Great-Britain. France and Spain were acknowledged friendly powers by the Dutch, and had a right to trade indirectly with them: though even then they were condemned when adopted by ſpecial licence

and

and a direct trade. But will the Dutch ſay, "the Americans are as much our friends "and allies as Great-Britain? They are in- "dependent; they are like ourſelves; they "mean to form themſelves on our model; "and we will take them under our protec- "tion." Let words ſpeak out, or let facts, ſtronger than words, announce the doctrine; this country will not bear it. It will have indignation too.

We refer to treaties, to prove in caſe of either party purchaſing the prizes taken from the other, that the prize, although *bona fide* bought, ſhall be reſtored to the true owners. Reads the article:

Article XX. Treaty of Bredah, 1667. The King of Great-Britain and the ſaid States-General ſhall not receive into their ports, cities and towns, or ſuffer that any of the ſubjects of either party do receive any pirates or ſea-rovers, or afford them any entertainment, aſſiſtance, or proviſions; but ſhall endeavour that all ſuch pirates and ſea-rovers, and their piratical accomplices, ſharers and abettors, be found out and apprehended, and that they ſuffer condign puniſhment for a terror to others; and all

ſhips,

ſhips, goods, and commodities, piratically taken by them, and brought into the ports of either party which can be found, even although they are ſold, ſhall be reſtored to the right owners, or ſatisfaction ſhall be given.

Is there not an indirect aſſiſtance given to the open and declared rebellious enemies of Great-Britain? yet what ſays the treaty?

Article of the treaty of Weſtminſter, Feb. $\frac{2}{12}$, 1673-4. Neither of the parties ſhall give, or conſent, that any of their ſubjects or inhabitants ſhall give any aid, favour, or counſel, *directly* or *indirectly*, by land or by ſea, or on the freſh waters, nor ſhall furniſh nor *conſent* that the ſubjects and inhabitants of their dominions and countries ſhall furniſh any ſhips, ſoldiers, mariners, proviſions, money, inſtruments of war, gunpowder, *or for any* things neceſſary for war, to the enemies of the other party of any rank or condition whatever.

And as to the ordering cargoes to be ſold for the ſervice of the State, in caſes of *extraordinary neceſſity*, that is clear from another article.

Article

Article XXVI. Treaty of Bredah. Merchants, Maſters, and mariners, of either party, or their ſhips, goods, wares, or merchandizes, ſhall not be arreſted or detained in the lands, ports, roads, or rivers of the other, to ſerve in war, *or for any other* ſervice, *unleſs upon an extraordinary neceſſity*, and then juſt ſatisfaction ſhall be made. This ſhall be no prohibition or hindrance of any embargoes or arreſts duly made, and in the ordinary courſe, according to the laws of either country.

Will any body ſay that this extraordinary neceſſity does not exiſt at this criſis; or that juſt ſatisfaction will not be made to the claimants, by paying them a good price for bad gunpowder? for ſuch was the laſt ſaid to be, which was ſold to the Board of Ordnance by order of the Court, in the caſe of the Two Brothers.

As the gentlemen are fond of quoting; in the laſt war we all remember how naval ſtores were ordered by act of Parliament to be ſold for the uſe of Government; nobody talked of treaties againſt it.

The King's Government do not wiſh to injure Dutch owners, if ſuch there are, but only

only to inſure the military part of the cargo not going to the American rebels for their ſupply in the very heat and midſt of a campaign.

The lenity of the ſame decree again (as in the caſe of the Two Brothers) will bring all the Dutch gunpowder to a Britiſh market, and indemnify the Dutch owners by a high price, and the hurt of our own manufacture.

In regard to claims, as well as transfers, I repeat again, they cannot be too ſpecific to avoid colluſions; and every juriſdiction muſt adopt new forms from time to time, as every country in the ſtate of human affairs and commerce takes a new face, and as freſh objects ariſe for the controul of the legiſlative or executive powers.

Sir George Hay. It would be too high for any ſuch Court of Juſtice as this to aſſert, that the Dutch may not carry in their own ſhips to their own colonies and ſettlements every thing they pleaſe, whether arms or ammunition, or any other ſpecies of merchandize, provided they do it with the permiſſion of their own laws; and if they act contrary to them, I am no judge of the

laws of Holland. I cannot enforce them; but their laſt placart permits ſuch exportation, with the permiſſion of the College of Admiralty.

I cannot judge politically, nor have I any diſcretionary power but on legal grounds.

The King's Miniſters muſt treat with the Dutch States, and enter into a negociation on this ſubject.

The treaties with foreign powers are beſt known and underſtood by his Majeſty's Privy-Council; and his Majeſty has power to make further rules for proceedings in his Courts of Admiralty; a repreſentation muſt be made by perſons of much more conſequence than I am; and when a notice comes to me from the Council, I will obey it.

What the Dutch would do, I will do as far as I can. The Dutch placart, in caſes of exporting without permiſſion of the College of Admiralty, under which the loading is to be made, ſubjects to confiſcation and fine foreign and Dutch ſhips; and when the Dutch have a permit, then ſay they, we will carry what we can.

Under

Under theſe permits, I cannot prevent. The gunpowder cannot be proved to be going directly for the uſe of the rebels. In regard to the ſhip it is claimed, as to the form of the claim hitherto uſual, properly enough; and the ſhip has been in poſſeſſion of the Dutch claimants fifteen months, as ſwore to by the Mate. The Maſter could not give much account of the owners of ſhip and cargo, as he took the command but eight days before ſhe ſailed. Every preſumption ariſes in point of law from poſſeſſion and acts of ownerſhip.

But the condition of the ſhip, being armed, and having officers going to the Provincial army, is a great point againſt the claimants for coſts, and muſt have ſtruck Lord Mulgrave. If it was clear that ſhe was going to New-England, touching at St. Euſtatia, that would never do. All ſhips trading thither are confiſcable; and the act of Parliament is notice to all the world, and ſo was the former act, in the caſe of naval ſtores. The declaration of Rouſman, the former Maſter, and part owner, as to this illicit deſtination, is well proved; and the ſtrong ſuſpicions ariſing

from that, and the armed ſtate of the ſhip, and the character of the paſſengers, are all circumſtances that concur fully to juſtify the ſeizure. Lord Mulgrave did his duty to ſtop this ſhip, and bring her in. I cannot direct any part of this cargo to be ſold. In the caſe of the Twegee Broders, there was clandeſtinity in lading the powder; beſides, there the agent conſented to a ſale of the powder and arms. I reſtore, therefore, the ſhip and cargo, and decree juſt cauſe of ſeizure and expences in favour of the captor. A repreſentation muſt be made by ſome proper perſon to Government as to cargoes of this ſort.

Friday,

Friday, November 13, 1778.

SIR JAMES MARRIOTT, JUDGE.

The PERE ADAM.

A CLAIM was given for a Frenchman, owner of this ſhip, ſeized before the declaration of repriſals; the Court rejected the claim, becauſe a commiſſion of general repriſals is ſtronger than even a declaration of war, authorizing to ſeize the goods of the foreign ſubjects every where, and immediately; whereas by treaty, in caſe of declaration of war, there are ſix months allowed to remove their perſons and properties: beſides this, the King of France publickly declared, on the 10th of June laſt, hoſtilities againſt England, ſo that the claimant had no *perſona ſtandi in judicio*, or no civil right to plead; the two countries being engaged in an actual war.

The YONGE HELENA,

A Dutch ſhip, was reſtored, having French goods on board, laden before the declaration for repriſals, bound from one port of France to another. The cargo, being

York, and made as if the ſhip was to carry ſalt for New-York, or the head-quarters; and the American paſſport was antedated a few months before Macurdy ſwore that he and the other bought the ſhip, which was a prize ſhip ſold at Jamaica; but he ſwore that Johnſon gave him up the paſſport, and one Mr. Williams procured it. Johnſon is out of the kingdom; Macurdy was a Britiſh born ſubject, but had reſided a good while in America. There was another man on board, who declared himſelf a ſubject of the American States. The claimant not only demanded his ſhip, but coſts; and the King's Advocate, Dr. Wynne, argued very ſtrongly for the claimant, that it was a fraud put on the Americans: that the Americans had a ſhop here for paſſports in blanks to ſell for the benefit of the Commiſſioners; and it was fair to buy of them protections; that it did not appear the ſhip was to go to the rebels. Dr. Harris on the other ſide contended, that though it did not appear, that Mr. Ridley was conuſant of the fraud of his own country, yet he was affected by the act of his two partners; that the ſhip muſt be conſidered as an adopted rebel ſhip;

ſhip; that the tranſaction was treaſonable, and coſts ſhould be given, although it is not uſual in general to give coſts againſt claimants, where a ſhip is condemned; as condemnation is held puniſhment enough, although the prize acts require the claimant to give ſecurity for double coſts: which is uſually in 60 *l.* the ſingle coſts being but 30 *l.*

The Judge declared the ſhip and ſtores to be condemned as rebel. He made very ſtrong remarks on the conduct of merchants and others ſupporting the American rebellion from the very center of this country, and on the offices and correſpondence carried on by rebel agents. That this nation (now fighting for its domeſtic preſervation, as well as empire) had its cruelleſt enemies within its own bowels; that he would not be bound by the act in regard to coſts. The American prohibitory act regulated, like other prize acts, the modes of proceeding, but did not take away the general powers of the Court; that the act required bail for double coſts from claimants; but there were other coſts beſides thoſe upon bail. He would not con-

demn the claimants upon their bail, but he would condemn them in treble coſts generally, *ex officio*, and as much as the proctors could ſwear to; that it was his duty to do as much juſtice as he could to the whole kingdom in this inſtance, in putting a check to every ſort of ſupport and encouragement from home of a ſyſtem involving the ruin of all good men's lives and properties; a ſyſtem treaſonable and traiterous. That here was a clear fact proved from the evidence of the guilty party, of aiding, abetting, and having intercourſe with the ſelf-eſtabliſhed and declared enemies of the King and nation; and he only wiſhed his Court had a longer arm to reach ſuch a ſort of treaſon; that if Mr. Macurdy, Mr. Johnſon, and Mr. Ridley, were diſſatisfied with the decree, they might appeal if they dared.

Monday,

Monday, November 23, 1778.

The GRUEL,

AN Engliſh tranſport, taken by the Americans, and fitted-out by the Congreſs, and laden with maſts and yards, and bound to France: the maſts and yards were claimed by John Durand, Eſq; as contractor with Government for ſelling trees fit for maſts in the province of Maſſachuſetts-Bay, and as proprietor of the ſame: and it was endeavoured to prove, that theſe maſts were felled by his agent, and depoſited in his agent's maſt-dock, the only one at Sheepſcut, upon Keenebec river, and there ſeized by the rebels, and laden on board this ſhip. But it appearing that the Congreſs had had poſſeſſion of this dock for two years, from 1775 'till 1777, when the maſts were put on board; that the name of the claimant was not upon them, but that of the Congreſs' agent; and that the maſts on board were thicker in diameter, and ſhorter in length, than the maſts claimed in the ſchedule; and that the agent reducing his claim from 53 maſts, which

were on board, to nine, ſhewed plainly that many other maſts were felled by private proprietors, or by the Congreſs, and were actually on board: the Court rejected the claim, upon the face of the claimant's own evidence, as not identified; and remarked on the danger of colluſion, if ſuch ſort of claims were admitted. The ſhip was reſtored to the Commiſſioners of the Navy (paying ſalvage) they appearing to have paid the value of her to the original owners.

De JONGE JOSLERS, *Reetſma*,

A Dutch ſhip, bound to France, cargo iron, hemp, and ſail-cloth: the naval ſtores were ordered to be ſold to the Commiſſioners of the Navy, for his Majeſty's uſe, on a fair valuation by merchants; the buyer to pay the incidental charges, ſo that the privateer might be at no expences; the money to be paid into Court, for the uſe of ſuch perſons who ſhould hereafter prove their property. As the Maſter would not ſwear that the leaders were the owners, and it appeared that the conſignees were Frenchmen; and as no claim was given, either for ſhip or goods, the ſhip was decreed to be reſtored

reſtored to the owners, *whenſoever* they, or their agents, ſhould claim, and make the uſual affidavits of their property.

It was obſerved by the Court, that there was ſomething very myſterious in the conduct of the Dutch Captain, who refuſed to claim; that it called to mind the refuſal of the French ſupercargo, in the caſe of the Koulikan; that it was well known there are many people very buſy to blow up a quarrel between us and Holland; that this conduct was a contempt of juriſdiction not to be borne in any Court of Admiralty in the world: that it was a dereliction of the intereſt of the owners, for whom every Maſter is a truſtee, and at the ſame time a weakening of all the reſt of the evidence in their favour; for one can hardly believe that cargo any man's real and ſole property, which he or his agent refuſes to claim, and ſwear to. That a Court can ſupply the defection of a Maſter, *ex officio*, and will do ſo, when owners are at a great diſtance, ſo as to know nothing of the capture, and when a Maſter may have colluded and deſerted them; that here the Dutch owners had time enough to know; the capture having

ing been made the 13th of October. That if there was any latent meaning in all this ſingular kind of ſtubbornneſs, it would loſe its effect; for the conſequence of any neutral refuſing contumaciouſly, after a monition to appear and claim, is a certainty to obtain no coſts or damages. That a French Admiralty Court would have condemned ſuch a ſhip, for want of a claim, without ceremony.

The JEANNE JEAN VANDERLEYE,

A Dutch ſhip, with French innocent goods on board, bound from Nantz to Oſtend, was reſtored by conſent, the captor engaging to pay all the expences on his part, which are the moſt conſiderable, unleſs the claimant ſhall inſiſt on coſts; which queſtion is reſerved for the claimant to declare.

The SANTA REIS, *Majos Roderigo Vidal*, Maſter,

A Portugueſe ſhip and cargo, French property on board, was reſtored, as privileged, and the privateer is to pay coſts and damages, by conſent.

ANNA

ANNA CHRISTIANA,

A Swediſh ſhip, reſtored; Britiſh merchants, claimants, aſſigned to prove their property of the cargo, being houſes in London, trading to France; the bills of lading all falſe made out, as if at Oſtend for Nantz, with ſteel ware and India goods, copperas and pimento. Laden before the declaration of repriſals. The bills of lading did not ſpecify for whoſe account and riſk; made out in falſe names as laders living at Oſtend; and the Maſter ſwore, that he believed the conſignees (who were all Frenchmen at Nantz) to be the owners, and that the goods were for their account; and that the bills ſigned by him were falſe; and that he had deſtroyed his clearances when he ſailed out of the river Thames. The claimants did not all of them ſay in their affidavits, that they ſhould be the *only loſers* in caſe of condemnation, and others only claiming for themſelves and co-partners, without ſpecifying thoſe partners, and where they reſide. The Court ſaid, that although the claims of Maſters of foreign carrier ſhips, taking in goods upon general freight,

freight, might be admitted in a general way, not knowing the owners, yet the colluſions practiſed here with the rebels and natural enemies of this country were ſo notorious, that ſpecifical claims muſt be required now of all Britiſh ſubjects claiming any goods on board neutral ſhips deſtined for the enemies ports. That on the other hand, ſome tenderneſs was due to merchants lading their property before repriſals were declared; and therefore the queſtion of the cargo to whom belonging, and when laden, ſhould be reſerved 'till the next Court for further conſideration.

The JOHN,

An Engliſh ſhip, retaken from the French by a privateer, and having been in poſſeſſion of the enemy near 96 hours, although not carried into any port; a queſtion was made, whether, there being no act of Parliament to regulate the proceeding in caſes of French captures and re-captures, the old rules ſhould not be obſerved in favour of privateers retaking, to give a ſalvage according to the time in the poſſeſſion of the enemy. That larger ſalvage has always been allowed to the

the privateers than to the King's ſhips, in all former acts, 'till the American act, which now equally confined both to one-eighth ſalvage. That it muſt have been a ſlip in the legiſlature, in the American act: as the King's ſhips are doing their duty, fitted out at the public expence, but privateers at the extraordinary expences of particulars.

The Court ſaid, that whether it was a ſlip or not, in the drawers of the American acts, yet it would be very aukward to have two different rules; one for American, another for French, re-captures. That as in this caſe the Court was not bound by the acts in former wars, which expired with them, ſo it was not bound in this caſe of French repriſals, by the American act of letters of marque. That the diviſions of point of time for more or leſs ſalvage, was always a bad rule, borrowed from the oldeſt Dutch placarts, and ſeemed calculated for encreaſing litigations and diſputes. The ſimpleſt rule was the beſt in every thing, and that the deciſion in French caſes of re-capture ſhould ſquare with the clauſe in the American act; therefore pronounced for an eighth ſalvage, yet not ſo as to preclude the

diſcretion of the Court to give a greater, and even a very great ſalvage, in other caſes, where there ſhould be very great merit in retaking.

There was no reſiſtance in this caſe on the part of the enemy; but when the action ſhould be attended with loſs of lives and blood, and damage of re-captors, they might expect a proportionable ſalvage; obſerving that this country owed much at this time to the activity of private armaments; and while privateers obſerved ſtrictly the law, and the King's inſtructions, in doing no injury to Britiſh or neutral innocent ſubjects, they would meet with every ſuitable and juſt encouragement.

Friday,

Friday, November 27, 1778.

Le GRAND TERREIN,

A FRENCH ſhip, taken by the Tartar privateer on the 9th of Auguſt: this ſhip appeared to have ſailed from Martinico with a cargo of cotton, rice, indigo, and tobacco; and it came out in evidence, that the cotton, rice, and indigo were laden on board on French account; the tobacco was not expreſſed in the other bills of lading, but mention was made of ſugar and coffee. The Maſter ſwore that this tobacco was put on board by Serres and Sargetſon, at Martinico; but he would not undertake to ſwear who were the true owners and conſignees; and that the reaſon of ſubſtituting the words ſugar and coffee in the bills, was, that the laders were afraid it would be ſeized by the Engliſh, becauſe it was the produce of North-America.

The captors prayed the Court to condemn the prize to them, on the ground that they had a commiſſion of marque to ſeize American property, and that this to-

bacco might turn out to be ſo, upon farther proof being allowed: that they had petitioned the Lords of the Admiralty for a letter of marque againſt France on the 5th of Auguſt, the day before the ſhip was taken; kept poſſeſſion of the veſſel (which was carried firſt into Torbay, and afterwards to Jerſey) after the date of the commiſſion being actually granted; that the French ſhip fired firſt, although not knowing of hoſtilities, as an American enemy would have done, and that there was an engagement of half an hour.

This being oppoſed by the Advocate and Proctor for the Lords of the Admiralty, it was contended, that the ſhip and goods being French, and taken by a ſhip not in poſſeſſion of an authority to cruize againſt the French, the ſame were droits of the Crown in the office of Admiralty, and that the takers muſt lay their petition, and ſtate the circumſtances of the capture to the Crown, in the uſual manner, who would then (as had been done in all ſimilar caſes, before the act for granting letters of marque againſt the Americans) refer the petition to the Judge, to reward them in ſuch proportion as they ſhould appear to merit.

The

The Court gave its opinion, that the Collector of Admiralty droits was right in this case; that to suppose a ship well commissioned, merely because the fitters have petitioned for it, although they have not obtained it, would be a doctrine attended with dangerous consequences to the national honour and public service. That there is no act of Parliament now in being in the case of the French hostilities, to oblige the Board of Admiralty to grant letters of marque upon petition of any parties. The policy of that obligation was not to be admired in former prize acts; and it is better there should be a discretionary power left in the Admiralty Board, considering the times; for very improper persons may apply; commissions may be wanted by smugglers and rebels; and there is too much reason to fear that some such have obtained them. Every thing is become full of collusion; and traders with our enemies may be armed, and commit piracy and depredation on all the world, with dishonour and danger to this country. The King's declaration for giving the prizes to the captors is far from supporting the proposition of the Advocates of the captors,

that

that a petition is a commiſſion by entendment, or ſo to be underſtood: for the King's declaration ſets forth, firſt, "the inherent "right of the Crown in all prizes;" and then that "prizes taken by ſhips, having "letters of marque, may be ſold and diſ- "poſed of by the merchants, owners, and "fitters, and others to whom ſuch letters "of marque are *granted*, for their own uſe "and benefit, after final adjudication, and "not before." There is no retroſpect in the King's declaration for private ſhips; but there is for the officers of the Navy, they *being already commiſſioned*, who are "to have "the neat produce of all prizes which are "or ſhall be taken." The argument of the tobacco being poſſibly American property, does not alter the caſe: it would do the captors no good, for the Court to order the parties to go into farther pleadings and proof of the tobacco, which, beſides, made only a part of the cargo. The argument drawn from poſſeſſion, after the granting the commiſſion, is not in favour of the captors: for the property of prizes veſts or not at the time of taking. The holding on that which is another's acquires no right; and the carrying away

away from Torbay to Jerſey did not help the captor's claim, but otherwiſe; for prizes being once brought into any ſafe port of his Majeſty's dominions are there to be kept, and not ſhifted about, unleſs in caſe of neceſſity. In regard to encouragement, that was a matter of petition and reference. The Court (under a former Judge) had rewarded amply: two clear thirds to uncommiſſioned captors: but more might, and would be given by the Court, under circumſtances of greater merit, as in caſes of fighting, and extraordinary bravery: the Court will adhere to no one general precedent, but all the King's true ſubjects, who ſhall engage the actual enemy, although without commiſſion, ſhall be amply rewarded; and it is therefore only now a contention, not on the part of the Board of Admiralty, tending (as was ſaid) to diſcourage the public ſervice, but a ſtruggle of the agent of the privateer, attacking the Collector of Admiralty droits, who ſhall have the agency. The captors ſeem to go out of the way, to get that which they might have, in the common road, at a leſs expence. The Court, therefore, pronounced that the ſhip and cargo be

condemned

condemned as a droit of the Admiralty. The Proctor, however, declared, he appealed from this ſentence as a grievance.

La BONNE AMITIÉ,

Taken the 11th of Auguſt by the Speedwell and Swallow privateers, being under the ſame circumſtances, excepting that the whole cargo was French produce, the Court made the ſame decree. The Proctor, however, did not appeal, only prayed that the Court would decree the captors to be rewarded immediately; or that the captors right to ſalvage might be reſerved.

The Judge ſaid, that he could not take upon himſelf to grant away the droits, which are a public right acquired to the Crown, till he was authoriſed by a reference from it: whenever it came, the captors would have reaſon to be ſatisfied: he was ſorry, whenever they were abſurd, or ill-adviſed; and as to the right of ſalvage, it is a right of common maritime law in all caſes of ſhips re-taken, and ſhould be reſerved (if prayed) ſo as that, in caſe the Crown ſhould not grant the prize (which never could be doubted, and he wondered

to

to hear it doubted now) the captors might come into Court, and inſiſt upon ſalvage.

ANNA CHRISTIANA,

A Swediſh ſhip (a general carrier) bound from London to Nantz, with falſe bills of lading for Oſtend. The ſhip was reſtored to the Swediſh claimants the laſt Court, but the queſtion as to the cargo reſerved for conſideration. Ordered, that the claimants of the cargo (Britiſh merchants) ſhall prove, from the cuſtom-houſe books, the date and contents of the clearance, which the Maſter ſwore he deſtroyed as ſoon as he got out of the river; alſo the date of the day on which the ſhip took her departure from Graveſend; whether before or after the King's declaration of reprizals; and that the five claimants (French houſes in London) Meſſ. Reboule, Theluſſon, Holtot, Jacquery, and Haman, ſhall prove their property. The parties aſſigned to prove are at all events to pay all the expences of proceedings, as their own falſe documents, defective bills of lading, and the deſtruction of their clearance were the occaſion, and are a juſtification of the captors

ſeizing the veſſel, which appeared never to have touched even at Oſtend, for which place it was cleared out. That the reaſon of putting in the name of an Oſtender, Mr. Hoys, in the bills of lading, and the colourable covering which was given by the claimants, (*viz.* that it was in order to introduce Engliſh Eaſt-India goods, pimento and ſteel, into France, which could only be admitted by the laws of France as from a neutral port) may be a true or falſe reaſon, but the Court cannot enter into it. The claim of Theluſſon is not ſpecifical; it is for ſelf and *co-partners*; but it does not ſay who thoſe partners are, and in what country they reſide; and the cargo would have been condemned in France clearly, if it were not on French account; ſo that it is highly neceſſary to ſhew, that the claimants laded not only on their own account, but real and ſole riſk. It is obſervable, that the Maſter has ſworn that he was hired by a broker, but he does not know who. The connections of merchants, as inſurers, actual or employed partners, having joint concerns and accounts, are ſuch, in the commercial world, that this Court

Court will find it very difficult to prevent the avowed enemies of Great-Britain receiving aſſiſtance from her own ſubjects; for the ſpirit of commerce, in all countries, riſing beyond a certain degree, abſorbs all public duties and ſpirit, and almoſt every moral and natural obligation. All nations are alike in this, as they are more or leſs corrupted by commerce and riches. Merchants reſident in England muſt plead as well as prove their property, if the captors inſiſt upon it, otherwiſe affidavits may be admitted by conſent. The captors have a right to plead contrary, and to croſs-examine; and the great object of the Court will be, to reach the leaſt treachery or colluſion of Britiſh ſubjects with as long an arm as it can.

In regard to the freight due to the Swede, the Court will allow all neutral carriers their full freightage, even as to the farther port of deſtination. That is their right, and a charge hypothecated on the goods of enemies, of which they ſhould have the full benefit, provided Maſters of neutral ſhips are guilty of no falſities or prevarications in their evidence or conduct. The

party to pay the freight will be the party to whom the goods ſhall be adjudged, and demurrage will be conſidered in ſome ſpecial caſes.

La PROSPERITÉ, *or* WELFAREN,

A ſhip claimed by the Maſter, for the inhabitants of Lubec, (one of the free Imperial cities of Germany) who alſo claimed the cargo generally, on *behalf of the ſeveral perſons who ſhould appear to have intereſt therein:* bound from Nantz to Dunkirk: taken by the Tyger privateer; had a French paſs and cocquet. Claims were given for Martinus Tak, a Fleming reſident in Flanders, and Dutil a Dutchman, reſident at Amſterdam: the firſt for ten bales of handkerchiefs. The laders were French; and the bills ſaid they were for Tak's account, but not riſk; and the brandy claimed by Dutil was expreſſed in the ſame equivocal defective manner.

There were alſo goods, coffee, and cotton-wool, entered for the account of one Rocha, who did not claim at all: and it was three months after the capture, on the 25th of Auguſt, before Mr. Amſinck, (a merchant

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in London, and agent for Tak and Dutil) entered a claim for their goods. The Court reſtored the ſhip to the Lubecker, and directed the claimants to verify the bills of lading, obſerving that the Maſter ſwore that he did not know the owners; that he believed the brandy was French, and referred to the bills of lading. It was ſuggeſted to the Court, that an order ſhould be made to prevent claims being given in this *general way, on behalf of the ſeveral perſons who ſhall appear to have intereſt,* that is to ſay, perſons unknown; for that it gave the Maſter and agents a right to inſpect all the papers, and then to ſet up and introduce freſh claims, (as Mr. Amſinck had done) at a diſtance of time, and to adapt them ſo as to ſupport the defective titles on board.

The Judge ſaid, he had no doubt but claims ſhould be as ſpecifical as the nature of things would admit: that claims for Britiſh ſubjects, as he had already ſaid, ſhould be very ſpecifical: he would ſettle the official form with the Regiſtrar; and if he had any doubts, he ſhould aſk and have the advice of all the Advocates, and

moſt

moſt able and reſpectable practitioners, to ſettle a form, if any real doubt ſhould ariſe. That it was much eaſier to ſee an inconvenience, in all modes of human ſociety, than to find a remedy, which may not, on trial, produce a greater evil. That the eſtabliſhed practice of Courts was not to be altered, without great danger. It led, ſometimes, to injure general juſtice, by endeavouring to do a particular one. It was true, that by the ancient rules of Admiralty, as obſerved by the King's Advocate, all the ſeparate parcels of goods were ſpecified in claims, and the parties themſelves were required to claim perſonally. But that practice, whatever it had been here formerly, and whatever it may be in the French, or other foreign Admiralty Courts, at this day, was changed in the late war, with great juſtice, in favour of neutral general carriers, upon freight; who have it not in their power to ſpecify, otherwiſe than by referring to their bills of lading; and cannot therefore be full in their affidavits annexed to their claims of cargoes, but which muſt be for perſons generally, who ſhall appear to have intereſt.

Affidavits

Affidavits annexed to claims are, in all caſes, only the vehicles of claims, to bring the parties intereſted into Court. It is the Maſter's duty to claim for them, till they can come and claim ſpecifically for themſelves.

As to his obtaining the advantage of ſeeing the papers and depoſitions, the Maſter could ſee nothing but what he had ſeen before; ſo no great danger from that: and as to honeſt neutrals, the Judge ſaid, he would be the laſt man to alter any practice now eſtabliſhed, which might give them a fair running in the courſe of a cauſe. That whenever the ſcales were even, a neutral was to have the turn in his favour; for that this Court was to judge uprightly between this nation and all others; and it muſt lean, for the honour of Engliſh juſtice (as well as bravery) againſt every poſſible charge or ſuſpicion of any ſelfiſh national prejudice. He would not therefore ſhut the office againſt neutral general carriers: they are in the caſe of all common carriers at land, who can only tell, from their entry-books, what perſons delivered goods to be loaded, and from the directions on the parcels to whom

whom they are to be delivered on arrival. But when parties themſelves come to claim, then it is reaſonable that they ſhould ſwear that they ſhall be the loſers *in ſolido*, that is, *ſolely* and *wholly*, and that the cargo was and is for their entire account and riſk from the beginning; that it would have been ſo, if the cargo had been, or were to be delivered at the port of deſtination; and not only they muſt ſwear affirmatively to their property, but negatively, that none of the King's enemies, have, or will have, any property or intereſt in the ſame, in caſe it ſhall be reſtored, or arrive at its deſtined port; and, in ſhort, that the 12th article of the ſtanding interrogatories will be a good model for the claims. That if deficient claims ſhall be brought by any, and particularly by any Britiſh ſubjects, the Regiſtrar ſhall, on their bringing them to the office, refer himſelf to the Judge, who would be ready to hear any objections upon them. That if it was once underſtood in France, that ſlight claims, and bills of lading, merely on account, or conſignments to order, or to bearer, would protect a French cargo, or

American,

American, under neutral or Britiſh names, there would be colouring and covering without end.

He ſaid, much regard would be paid to what ſort of ports ſhips were bound. The nature of the trade at Dunkirk and Oſtend was well known; all the world ſmuggled there; Engliſh Eaſt-India ſhips and others (it was well known) dropped their goods off there, in order to have them run into England to eſcape the King's duties. He was afraid that the brandy and handkerchiefs would turn out, if not enemy's property, a ſmuggling concern. No neutrals, unprivileged, can *protect* the goods of the King's enemies, without being ſuch. To allow the privilege without ſtrong grounds, would be to ruin this kingdom.

CONCORDIA AFFINITATIS,

A Swediſh ſhip, and general carrier on freight, taken by his Majeſty's ſhip the Quebec, bound to France from Hamburgh, where ſhe took in a cargo of hemp, pewter, copper, ſtaves, hogſheads, and ſmall caſks. The Maſter claimed the cargo generally, and ſwore that he received the goods from

a broker at Hamburgh; that he did not know the owner; and that his orders from the Hamburgh broker were to apply to a broker in France. Out of twenty-ſeven bills of lading, one named upon whoſe account, but no riſk; and one other named account and riſk. Court reſtored the ſhip to the Swediſh owners; decreed farther proof of the property of the cargo, whenſoever it ſhould be duly claimed, and ordered the hemp, and ſuch copper ſheets as ſhould appear to be fit for ſheathing ſhips, to be ſold for his Majeſty's uſe, at a fair valuation by merchants; the freight and expences of proceedings to make a part of the price, and the money to be brought into the Regiſtry for the uſe of the parties who ſhould finally obtain the property upon a further hearing.

Les QUATRES FRERES,

A Daniſh ſhip, taken on the 7th of Auguſt by his Majeſty's ſhip the Helena, bound from St. Vallery in France to Marſeilles; a claim was given by the maſter for the ſhip, as Daniſh property, and for the cargo, as being on board a Daniſh ſhip.

The

The maſter and two more of the crew, who were examined, ſwore, that they believed the cargo (which was ſoap, liquorice, oil, cotton, brandy and ſyrup) was French property. The queſtion therefore turned upon the privilege of carrying free the enemy's goods, which was ſtrenuouſly contended by the advocate for the claimants, on the ground of the treaty of Copenhagen, July the 11th, 1670, art. 40. The words are, " If the Hollanders, or any other nation whatever, have, or ſhall obtain from his Majeſty of Great Britain any better articles, agreements, exemptions, or privileges, than what are contained in this treaty; the ſame, and like privileges, ſhall be granted to the king of Denmark and his ſubjects alſo, in a moſt full and effectual manner." So that the conſequence followed, as it was argued, that the Dutch treaty and Daniſh muſt be conſidered as one. It was admitted, however, that the Daniſh paſſport on board was not ſuch as the treaty preſcribes, but of a very different tenor. It was contended, on the other ſide, that, for above a century, the privilege had never been allowed, and no requi-

ſition ever made of it; and that the treaty not only requires a very ſpecial paſſport in terms as there deſcribed, but it is expreſſed in the 40th article, leading to the paſſport (the form of which is inſerted,) that the very end of the paſſport is, "leſt goods, merchandizes belonging to the enemy, may be fraudulently concealed, under colour of amity; for preventing fraud," &c. &c. Therefore it clearly ſhewed, that enemy's goods were not to be concealed, but may be (as in the 12th article of the treaty of Sweden, Whitehall, October 21, 1661, where a particular paſſport is required for the ſame purpoſe) taken out, and the goods of the enemy found in the ſhip of the confederate, but not the confederate's goods, made prize.

The Judge ſaid, that there is but one way of expounding all grants and contracts, private or public. The ancient and uninterrupted uſage, for above a century, is the beſt interpreter of the ſentiments of the contracting parties; and grants of an eſpecial privilege, deviating from the general law of citizens, or nations, are *ſtricti juris*. In the Hiſtory of Treaties, it does not appear

pear that the Danes have ever been allowed, or ever exerciſed this privilege. An invariable ſeries of precedents, in all former wars, and deciſions of the King and Council, ſhewed the contrary, and the ſenſe of both nations. At the firſt breaking out of hoſtilities, ſuch as the preſent, it was natural enough for Daniſh ſubjects to feel the pulſe of this country. But there is an obvious anſwer concerning the 40th article of the treaty of Copenhagen, however ſtrong it may ſeem in its expreſſions at firſt view: All the better articles, agreements, exemptions, or privileges therein mentioned, refer only to ſuch as are or ſhall be granted to any other nation, [Sweden is excepted ſpecially; for two nations, like other near neighbours, are very apt to envy and hate each other,] in regard to tarifs, and duties upon imports and exports. Had the article ſtood alone, the argument might have been more powerfully ſupported in favour of free ſhip, free goods; but all articles in a treaty muſt be taken, both in the letter and ſpirit, as one ſtipulation and contract. The ſpirit of the treaty, which forbids *all aid of the enemy*,

enemy, would be defeated by the privilege claimed, and the letter of the 40th article totally overthrown; which article ſhews, that the enemy's goods are not to be concealed. All that can be drawn from this treaty is, that the ſhip and goods of the friend ſhall not be infected by the goods of the enemy, and ſo made prize, according to the old practice of the law of nations, before the treaty. That beſides the Maſter and crew ſwearing that the cargo was French property, the claim itſelf was an evidence of it, that it was enemy's goods, becauſe it inſiſted they were privileged by the ſhip. The Judge ſaid, he would never open a door for a new precedent, enabling Danes to protect the commerce of France. He would allow freight, and all reaſonable incidental charges, as between merchant and merchant: Reſtored the ſhip as Daniſh, and condemned the cargo as French property.

The SARAH *and* BERNHARDUS

Was a Daniſh ſhip, taken on the 2d of September, by the Active private ſhip; claimed as the property of the widow Ancker

Ancker and ſons, Daniſh ſubjects; alſo the cargo of deals, 14 guns mounted on carriages, and 8000 iron ſhot (not for the ſhip's uſe) bound from Chriſtiana in Norway to Havre de Grace. The papers appeared to be falſe; the manifeſt was of goods conſigned to Portſmouth; and the bills of lading were for the deals to be delivered to Azenberg and Freres, at Havre de Grace, for their account and riſk, but the cannon and balls at Portſmouth; and that bill of lading appeared, by affidavit of the captain, to have been found ſince the capture and delivery up of the reſt of the papers. The Maſter ſwore that he was to deliver the deals at Havre; and if he met with a good market there, to ſell the cannon and balls, being the reſt of the cargo, otherwiſe to bring it back; but if he met with contrary winds, he was to put into Portſmouth, and there to diſpoſe of it.

The counſel for the captors preſſed hard with the third article of the treaty of Copenhagen, in regard to warlike ſtores as contraband, and confiſcable: and that the cannon and balls of courſe were ſo.

But

But the Court ſaid, that as the ſtores were clearly Daniſh property, and deſtined for *a market*, either French or Engliſh, and as hoſtilities were not notified, and the concealment, if any, (for it was not fully proved) was neceſſary to preſerve the cannon and balls from confiſcation in France, on account of Portſmouth being named, it ſhewed no *mala fides* in the Daniſh Widow and her Sons; the Court reſtored the ſhip, and ordered ſuch of the deals as ſhould be fit for the Navy, and ordnance ſtores, to be ſold for his Majeſty's uſe, as in the other caſes. Juſtified the ſeizure. The privateer to be at no expences. Such cargoes for the future would be condemned, now hoſtilities were fully known and underſtood.

The WANDRINGSMAN

Was a Swediſh ſhip, taken the 2d of September by the Reſolution privateer; bound to Udwalla, from Croiſic in Britanny; ſhip and cargo claimed as Swediſh property; the latter for Coch and ſons, reſiding at Udwalla in Sweden. There were three bills of lading; laders all Frenchmen. Letter

A.

A. was a bill for wine and vinegar, expreſſing to be on account of Coch and Sons, but riſk not expreſſed. Letter B. was of divers goods, of which there was no evidence in the bills of lading, that it was for their riſk as well as account. Letter C. was for ſalt, on account and riſk of Coch and Sons.

E. was coffee, expreſſed to be for the account of merchants at Bourdeaux; and there was an acquittance on board in French; ſetting forth, that Weltners and Co. French merchants there, the laders, had put the coffee on board for their account and riſk, and that it was the produce of the French iſlands. The Maſter endeavoured to get rid of this, by ſaying, that this acquittance was obtained in Weltner's name, as his property, becauſe French natives obtained a drawback upon coffee exported. The Maſter expreſſed in his claim, that himſelf was one of the proprietors of the cargo, and his deſerting this in his depoſition was urged againſt him by the Counſel for the captors. The Court reſtored the ſhip, but thought it unneceſſary to oblige the claimants to make, at a great expence,

farther proof of the property of the wine and vinegar in letter A. the captor having made free with the wine: but directed farther proof of the different goods in letter B. conſigned by the bills only to order. Reſtored the ſalt, letter C. as claimed; but the Judge ſaid he was ſtruck with the conſequences, and with the colluſion which would follow, if a ſingle witneſs, ſtanding alone as the Maſter did, were to be permitted in any caſe to aver againſt ſhip-papers and public inſtruments. That if it were true that the Swede, as pretended, had perſonated a Frenchman, in obtaining the acquittance and drawback, he had made himſelf an adopted Frenchman, and was aiding the commerce of the produce and revenue of France. Therefore the coffee E. muſt be condemned as the property of the perſon expreſſed to be a French merchant in the French acquittance; but it ſhould be ſubject to freight; and the captor appearing by the evidence of the Maſter, though not to have broken bulk, yet to have tapped and drank up a hogſhead of wine, which was the Maſter's private adventure, ſhould pay the Swediſh

Maſter

Maſter for it. That the Maſter had not deſerted his claim for himſelf, as was inſiſted, for every Maſter of a ſhip has ſomething on board of his own. Little inaccuracies are not to be minded; his property muſt be reſtored with the ſhip.

Wedneſday, December 2, 1778.

VERANDEREN, *otherwiſe Le* CHANGEMENT,

A GENERAL ſhip upon freight, taken the 17th of Auguſt by the privateer the Two Brothers, bound from Bourdeaux to Dunkirk.

The Maſter gave a claim for the ſhip as belonging to himſelf, a part owner, and Dutch ſubject, as he called himſelf, and to others reſiding at Embden, ſubjects of the King of Pruſſia; but he gave no claim of any ſort for the cargo, and declared, in evidence, that he knew nothing of the true owners and conſignees: and ſo depoſed all the reſt of the crew, who were all Pruſſians. There were ſome goods on board, which were laden by Frenchmen, (Amand and ſons) and conſigned to Frenchmen on their account and riſk. The Maſter ſwore, that the cargo was laden by a French broker, for account of the perſons who were the laders. A claim was given in for Berto and Lazarus Vallé, of the Haymarket, London, for two tons of French vinegar; and another

ther claim was given in by Mr. Leidts, of Ghent in Flanders, (an Auſtrian ſubject) for fourteen bales of coffee, and five bags of anniſeed, as privileged on board a Dutch ſhip, according to treaty. It did not appear, by the bills of lading, that theſe goods were for the account and riſk of the claimants: the whole cargo was put on board in June and July laſt. There was a paſs, but it was not, as preſcribed by treaty, truly granted to the Maſter upon oath, appearing before them perſonally; but it was procured (as the Maſter depoſed) by a French and Dutch broker, for him, from the Burgomaſters of Appingedam; *that the ſhip had never been in any port of Holland*, but ſhe was built at Embden, and her firſt voyage was from Embden to Bourdeaux; and her laſt voyage from thence was deſtined to Dunkirk, in which ſhe was taken. That he was born himſelf at Embden, a ſubject of the King of Pruſſia, but had obtained a Dutch burgher's brief of citizenſhip in the ſame way as he had obtained what he called a paſs.

Together with the bills of lading were ſeveral acquittances from the French cuſtom-houſe,

tom-houſe, correſponding with numbers and goods deſcribed in the bills; by which acquittances it appeared, either that the goods were for the account of the French laders, or that they had given bond to export them to the French colonies in America.

The Court decreed reſtitution of the ſhip, as a Pruſſian ſhip; and that the freight and all expences ſhould be paid to the Maſter, and be a charge upon the whole cargo. Condemned all ſuch goods as appeared, either by the bills of lading, or acquittances, to be for the account and riſk of French laders or conſignees, or for which they had given bond at the French cuſtom-houſe, to export to the French colonies.

The Court admitted the claims of Berto Vallé and Leidts, and aſſigned them to prove the ſame; and allowed time till the firſt day of next term for any neutrals to claim and prove the reſt.

The Court obſerved, that after ſhip's papers had been brought in, and examinations were public, the very late introducing of claims carried a ſuſpicious appearance. The ſhip was taken the 13th of Auguſt;

Leidts

Leidts did not claim till the 2d of October; and Berto Vallé's claim was not heard of till the 3d of November.

Berto Vallé, as a reſident Britiſh ſubject, could not be allowed to claim, but under the favour of the circumſtance that all the cargo was put on board before the declaration of repriſals.

That Leidts had almoſt confeſſed that the goods claimed by him were the effects of French enemies, ſince he claimed the privilege of the treaty for them; which was more than the Pruſſian Maſter would do, who knew very well his ſhip was not a true Dutch ſhip, but a Pruſſian.

Now a Pruſſian ſhip has no privilege by treaty, nor by the cuſtom of nations, to carry free the goods of enemies.

In caſe a ſhip appears not to have been in the neutral port, or the Maſter to have obtained his paſſport in perſon, upon oath, of the ſhip being true neutral property, the French Admiralty Courts, by the late reglement, as well as by all former ones of that nation, confiſcate both ſhip and cargo.

Neutrals will do well to turn their eyes towards thoſe ſeverities, and make the compariſon,

pariſon, in point of lenity and juſtice, between England and her enemies.

The VANDER LEYE,

Was clearly a Dutch ſhip upon freight, with a Dutch paſs, or ſea brief, and all other proper documents; the goods of an innocent nature, the property of Frenchmen, and bound from Amelsfort to Morlaix, taken by the Reſolution privateer, and carried into Rye on the 9th of September.

The Maſter claimed the ſhip as Dutch property, and the cargo as privileged on board a Dutch ſhip, according to treaty.

The Court decreed both to be reſtored, with all coſts and damages. The Judge added, that if it had appeared in evidence, that the privateer had been guilty of any breaking bulk, or had miſuſed the ſhip's crew, he would have puniſhed the Commander of the privateer in a more exemplary manner; ordered the coſts to be ſettled by the Regiſtrar of the Court, and the damages, (taking to his aſſiſtance for the latter two merchants, to be named by the parties, and approved by the Court;) and he recommended it to the parties, that the

Engliſh

Engliſh captors ſhould name a Dutch merchant for themſelves, and the Dutch claimant an Engliſh one for himſelf; ſo that the parties might be certain to have the two moſt reaſonable men, and beſt arbitrators; and it was the more neceſſary to be recommended at this time, as national prejudices, and private paſſions and intereſts could not be too carefully guarded againſt in all ſuch cauſes as theſe are, in diſputes between nation and nation; for there are violent people every where ready to inflame matters for their own advantage, although the ruin of both countries might be the conſequence of private vehemence. He would do his beſt to prevent it.

The JEANE ISABELLE,

Taken the 4th of Auguſt, by his Majeſty's ſhip the Kite cutter, a Swediſh carrier ſhip upon general freight, bound from Alicant in Spain to Dunkirk; a claim was given by the Maſter for his ſhip, and for his freight and charges: claims were alſo given for part of the cargo, chiefly wine and brandy, by P. De Bucher, an Auſtrian ſubject; by Mr. John Devette, of Oſtend;

by Meſſ. Walther and Pate, of Alicant, Spaniſh ſubjects; and by John Wombwell and Sir George Wombwell, of London, merchants, for themſelves; and Peter Arabet and Co. their partners, at Alicant. But theſe claims not correſponding with the titles of property, the ſhip's papers, and the Maſter not ſwearing to them, the Judge ordered the neutral ſubjects to make farther proof; and that the Britiſh ſubjects ſhould prove in a manner ſtill more ſtrictly. Reſtored the ſhip to the Swediſh ſubject, with freight and all his expences; juſtified the ſeizure; all expences to be charged to the account of the whole cargo. It was made a queſtion, as in Berto Vallé's caſe, whether the Wombwells, as Britiſh ſubjects, trading to an enemy's port, could claim. But the Court obſerved, that the goods were all laden before the King's declaration of reprizals; and the Maſter's inſtructions were, in the contingency of his finding war declared, and that he could not go to Dunkirk (which inſtructions plainly looked as if the goods were Britiſh property) that he ſhould go to Oſtend. The Judge alſo obſerving, that there was a bill of lading for eleven

pipes

pipes and four half-pipes of brandy, for the account of Bellon and ſon, Spaniſh ſubjects, but not ſaying *for riſk*, and there being nobody appearing to claim for Bellon, or to make proof of his property, the Court allowed time for Bellon and ſons to claim and verify. Concerning Britiſh claims, the Judge ſaid, he expected to have heard from the counſel for the captors of the caſe of the Spaniſh regiſter ſhips, on board which, in the war before laſt, the property (although proved) of Britiſh ſubjects, laden before the war, was condemned; that the principle of that deciſion, by the Lords Commiſſioners of Appeals, was not only the danger of colluſion in covering the property of the enemy by Britiſh claims, but that the Britiſh laders were adopted as Spaniards; for, by the laws of Spain, no merchants can bring over bullion, &c. in the Spaniſh flota, unleſs in the names, and as for account and riſk of Spaniards, for which they pay an indulto, or duty to the King of Spain. But the Judge ſaid, he thought the caſe of Berto Vallé and of Meſſ. Wombwell very different from that; and the extraordinary and ſudden nature of the preſent

hoſtilities required ſome lenity to be ſhewn to Britiſh merchants.

VRYHEID,

A Dutch ſhip, taken on the 26th of Auguſt by his Majeſty's cutter the Kite, Lieutenant Trollope commander, bound from Riga to Rochfort, the cargo ſeventy-one maſts of above ninety feet in length, fit for the firſt rate ſhips of war, twelve ſmall ditto, four hundred and ſixty boat-maſts, one hundred ſpars, two thouſand nine hundred deals, laden by Blanchenhagen of Riga, who ordered the Maſter to touch at Elſineur in Denmark, and to apply to the French Conſul for orders in regard to the deſtination. The Maſter depoſed to this fact, and that the French Conſul directed him accordingly to carry the naval ſtores to Rochfort; and that a broker there would inſtruct him to whom they were to be delivered. The Dutch Maſter claimed his ſhip as Dutch property, having a ſea-brief from the States, and duly documented; and the cargo as privileged under the treaty of December 11, 1674; with all coſts and damages. The Advocate for the captor conſented to reſtitution

tution of the ſhip with freight, but prayed condemnation of the ſtores as for the account of the French King. He ſtrongly preſſed, that the privileges had never been yet allowed that the Dutch ſhould carry the naval ſtores of the enemy's Government; that the privilege in ſuch an extent as claimed was never in contemplation of the contracting parties, who were at the time of this treaty entering into an alliance offenſive and defenſive, and underſtood as engaging to have always the ſame friends and the ſame enemies: that the great fœderal union between England and Holland had ſince then been eſtabliſhed if poſſible in a firmer manner. On the part of the Dutch claimant was urged the IVth article of the treaty as explicit, that "maſts, planks, "boards, and beams of any kind of wood, "and all other materials requiſite for build-"ing or repairing ſhips, ſhall be wholly "reputed free goods, ſo that the ſame may "be freely tranſported and carried by the "ſubjects of the States, to places under "the obedience of the enemies of his ſaid "Majeſty, except only to places beſieged, "blocked up or inveſted."

The

The Proctor and Advocate of the Admiralty moved, that the ſtores might be ſold on a fair valuation to the Commiſſioners of the Navy for his Majeſty's uſe. The freight, the expences of proceeding, and all other charges due to the Dutch claimant, to make a part of the price.

The Judge gave his opinion nearly in the following terms: This queſtion, of the higheſt national importance, turns, in my opinion, upon a great extent of comprehenſive argument. To give the utmoſt force to the treaty of 1674, relied on by the claimants as the fort of their pretenſions, the IVth article muſt be admitted to be in terms as ſtated: The Iſt article ſtipulates, "Freedom to exerciſe all manner of traffic." Article II. "This freedom of commerce "is not to be interrupted by reaſon of any "war as to any kind of merchandize, but "ſhall extend to all commodities which "may be carried in time of peace; thoſe "only excepted which are deſcribed under "the name of contraband." There follows the IIId article, affirming what ſhall be contraband, ſpecifically naming the ſorts of arms

arms and ordnance, and laſtly, in general words, " All other inſtruments of war."

The IVth article is negative of contraband; and maſts, &c. are excepted from being contraband.

By the general law and uſage of nations (treaties and extraordinary ſtipulations out of the queſtion) there are two ſorts of things confiſcable, 1ſt, all thoſe, generally, which belong to an enemy, found on board the ſhips of a friend: 2dly, thoſe which belong to a friend, but which will aid the enemy to maintain war. Theſe latter are *contraband*; ſo that one of the ideas inſeparably annexed to contraband, and to the exception of contraband, is, that the goods excepted or not excepted belong to a friend; from which it is clear that the goods of the Dutch ſubject, ſpecially or generally enumerated in article III. are contraband; and that maſts, &c. &c. and all other materials requiſite for building and repairing ſhips, excepted in article IV. do mean ſuch maſts, &c. which do alſo belong to the friend, and are going in the ordinary courſe of trade as ordinary merchandize and for mercantile purpoſes. This muſt be the natural ſenſe

of

of the ſtipulation. For to admit a right of being the privileged carriers of the enemy to the royal docks, would work ſuch an adoption of a hoſtile character, would defeat every idea of alliance and confederacy of the contracting parties, and transfer the fœderal union over to the other belligerent.

The great argument is, that all ſubſiſting treaties of commerce and alliance offenſive and defenſive, are to be taken as one contract, *uno contextu*, and the ſpirit of the fœderal union is to interpret the letter ſo that no one treaty, or article of the treaty, is to be taken ſubſtantive, or ſtanding alone and ſingle from the reſt.

The ſecret article of Weſtminſter, 1673-4, is as ſtrong as poſſible. The words are, "Neither of the ſaid parties ſhall give nor "conſent that any of their ſubjects or in- "habitants ſhall give any aid, favour, or "counſel, directly or indirectly, by land or "by ſea, or on the freſh waters, nor ſhall "furniſh nor conſent that the ſubjects and "inhabitants of their dominions and coun- "tries ſhall furniſh any *ſhips*, ſoldiers, ma- "riners, proviſions, money, inſtruments "of war, gunpowder, or any other things

"neceſſary

" neceſſary for making war, to the enemies " of the other party, of any rank or con- " dition whatſoever." It is very clear that ſhips may be furniſhed by piece-meal as compleatly as if they ſailed out of the Texel with all their furniture.

If one Dutch ſhip carries maſts, another anchors, another cordage, another ſails, another a ſhip's frame (and ſuch there is now taken, of ſize for a ſeventy gun ſhip) a whole fleet may go by detail from Holland for the King of France's ſervice.

It could never be the intention of the contracting parties, that Dutch ſhips, or Engliſh, *vice verſâ*, ſhould become the tranſports of an enemy's government, for carrying free its ſtores of war either for ſea or land.

Beſides all this, the uſage of nations is the beſt interpreter of all contracts: and it always has been the uſage to pay the Dutch carrier for the enemy's ſtores, and for his freight; and the precedents of the uſage univerſally acquieſced in during the laſt wars are worth all the reaſonings of Grotius and Puffendorf.

By decreeing naval ſtores to be ſold to the public, and the freight and all incidental charges, as between merchant and merchant, made a part of the price, the carrier has the benefit of the treaty; the great object is his cabotage or carrying trade; give him that, the ſpirit of the treaty is fulfilled. As to neceſſity, by the XXIVth article of the treaty of Bredah, "the perſons of merchants, maſters, and "mariners of either party, their *ſhips*, "goods, wares, and merchandizes may be "arreſted or detained in the port of the "other, *to ſerve in war*, or for any other "ſervice upon an extraordinary neceſſity, "and then juſt ſatisfaction ſhall be made."

Holland, in caſe of ſuch neceſſity, may preſs Engliſh ſhips and ſeamen; and England may do the ſame *vice verſâ*. The *caſus fœderis* exiſts: the dominions of Great-Britain in America and her commerce on the ocean are invaded by France. The neceſſity is and can only be judged of by the party who claims the aſſiſtance; becauſe if it reſted with the other confederate to judge of the neceſſity, he would judge in his own cauſe, and elude the contract.

Whenever

Whenever it comes to that, it may be urged with equal reaſon and plain ſenſe: "I ſay, I am in neceſſity, and want your "aſſiſtance." You ſay "I am not in ne- "ceſſity, and you will not give the aſſiſ- tance." The reply is obvious: "I know "beſt my own wants and neceſſities which "*I feel*, and *not you*; if therefore you will "not allow my demand, I will not allow "your's. All is reciprocal. As you do "not admit my neceſſity, I am under a "neceſſity to refuſe your privilege."

As to England having enjoyed the privilege of the treaty, it was but once, (above a century ago.) But Holland on the contrary has uſed it ſo often as almoſt to *wear it out*.

In the preſent ſtate of things, England, in a moſt extraordinary poſition, never poſſible in contemplation in the utmoſt range of the imagination of the contracting parties, engaged in a civil war with her own ſubjects of the whole continent of Britiſh America, and aſſailed firſt privately, and then publicly, by France, cannot admit of the privilege of carrying the naval ſtores of the enemy, in the extent claimed by the States, without

without opening her breaſt to all her enemies without defence.

She is obliged by every principle of ſelf-preſervation to ſnatch the ſword from the hand of her aſſailants, let who will interfere and afford arms to that reſtleſs and malignant nation, who, in the weakneſs or deſtruction of Great-Britain, will moſt aſſuredly involve the *fate of Holland.*

The Judge decreed the ſhip to be reſtored to the Dutch claimants, together with the value of the cargo: the naval ſtores to be ſold, according to former precedents, for the uſe of his Majeſty; all freight, expences and charges, both of the captor and claimant, to be paid by his Majeſty. From this ſentence the Proctor of the captor appealed; but the Court ordered the execution of the ſentence not to be ſuſpended, and the captor to give adequate ſecurity to anſwer the appeal.

Saturday,

Saturday, December 5, 1778.

The REBECCA,

AN American ſhip, taken the 23d of Auguſt, 1778, by the Dutcheſs of Kingſton and Triumph privateers, bound from Charles Town in South Carolina to Bourdeaux. A claim was given for the ſhip as a recapture on the part of Mr. John Strettel, who, in the affidavit annexed to his claim, ſwore, that he bought her, on the 8th of October, 1776, of George Catton, the then Maſter, and of Benjamin and Calverly Bewick, Eſqrs. merchants of London, for 500 l. deſcribed to be of 180 tons burthen, and then lying in the river Thames, with the ordinary clauſe of warrantry, that they had good right, full power, and authority, to ſell. That he ſent her afterwards under Catton's command to St. Kitt's, about June 1777; that in the very voyage ſhe was taken by an American rebel privateer, and carried into Bedford in New England.

Claims were given in by the following perſons for the ſeveral parcels of the cargo.

Mr.

Mr. William Creighton for 43 caſks of indigo, W. C. Mr. Robert Ray for 26 caſks of indigo, two hogſheads of tobacco, R. Mr. John Moncrief for three hogſheads of tobacco, J. M.

The ground of their claim was, that they were all compelled to leave Carolina in conſequence of an act of ſtate (as it is called) paſſed on the 28th of March 1778, by the rebel government, obliging all perſons to abjure his Majeſty King George the IIId. to take an oath of allegiance to the pretended ſtates, otherwiſe to depart the colony in ſixty days; to ſell all their eſtates, on pain of being apprehended, and committed to priſon on refuſal upon tender of the oath. Under the farther penalty upon *neglect* or refuſal, to be made incapable of exerciſing any profeſſion, trade, art, or myſtery, buying, ſelling, acquiring, or conveying any property, ſuch property to be forfeited, one half to the informer, the other half to the ſtate; obliging them to ſell their eſtates, and their attornies to remit the amount within twelve months: and on failure in point of time to pay the ſame into the treaſury of the ſtate; perſons

ſons ſo withdrawing and returning, to be adjudged guilty of treaſon againſt the ſtate; and, on conviction, to ſuffer death as traitors.

Theſe claims were oppoſed by the captors on the ground of the danger of admitting colluſive claims to avoid the prohibitory act of Parliament, under pretence of being exiled loyal Americans, with reſpect to the cargo: and in regard to the ſhip it was objected that its identity was not proved by any affidavit (as is uſual in the like caſes) of any perſon having inſpected the ſhip, and that the tonnage differed: this ſhip being depoſed to be of 300 tons; and Strettel's affidavit and bill of ſale annexed to his claim, ſetting forth that the ſhip claimed was only of 180 tons burthen.

The counſel for Strettel urged that he ought to be allowed farther time to prove his property, and that variations of tonnage in paſſports and depoſitions were frequent in almoſt every conteſted cauſe, particularly the Dutch.

It was argued in favour of the claimants of the cargo, that in ſeveral deciſions by the late Judge in the caſes of Governor Bull,

Bull, Mr. Angus Macaulay, Mr. Telfair, and others, Americans, coming over with their property for their ſupport, and not for the purpoſes of trade, their properties had been reſtored, notwithſtanding the prohibitory act.

The Court decreed that Strettel ſhould prove the property and identity of the ſhip; was of opinion that an affidavit of inſpection is always neceſſary; that the difference of the tonnage between 180 tons in the bill of ſale, and 300 tons in the depoſitions, was too great not to make the identity very ſuſpicious. That the warrantry in the bill was not ſufficient evidence of the property: for perſons may have (as it is there ſaid) good right, full power, and authority to ſell; and yet they may be only the attornies of the ſeller. Every body knows that almoſt all trade is now, and has been for many years, carried on in this kingdom, and indeed in almoſt all Europe and the colonies by commiſſion. There ſhould be ſome proof of the ſhip's regiſter, and evidence that the ſellers did not act by letter of attorney. Colluſion is very obvious in the transferring of property of ſhips,

ſhips, and though this idea was often urged in ſeveral cauſes determined at the beginning of the rebellion, and ſoon after the prohibitory act, as a reaſon to ſhew the neceſſity of merchants, purchaſers of American ſhips, ſtrictly proving, that they were *bona fide* transferred, yet the argument was preſſed in vain; and it was ſaid, "We do not ſit here to determine upon title deeds:" however it is now high time to require ſtrict proof of the titles of ſhips claimed as Britiſh property.

An attempt was made by the counſel for the captors to read an affidavit made by Chaſe, the Maſter of the Rebecca, to ſhow, that the ſhip belonged to Quakers at Philadelphia; that Catton, being an eighth part owner of the ſhip, and the remainder being the property of the Quakers, on the firſt news of the prohibitory act, the ſhip being then at Falmouth, ſet off for London, and there made a falſe bill of ſale, with a view to prevent the ſhip being ſeized by Government, and then ſailed with falſe papers for St. Kitt's, where he took in a lading of ſugars, when he was met by the American privateer, and the cargo was con-

demned at Dartmouth in Maſſachuſet's Bay, as Britiſh property, and the ſhip as having carried on trade with Great Britain, and for having fired upon two American privateers. This affidavit was dated the 9th of September laſt, and ſworn before the Commiſſioners at Guernſey; and the Judge obſerving that the preparatory examination of the maſter and crew bore date the ſame day, rejected the affidavit as exceedingly irregular, and ordered the Commiſſioners to be ſeverely reprimanded for taking it, and to adhere ſtrictly to the ſtanding interrogatories for the future; for that every kind of ſubornation muſt be expected, if a witneſs, after giving his evidence upon the interrogatories, is ſuffered to ſwear again to the ſame matter upon affidavits. That the Maſter, Chaſe, declared himſelf a ſubject of the ſtates of America, and ſeemed to bear no good will to the claimant of the ſhip. It was very remarkable that the captors ſhould obtain and bring in ſuch an affidavit, eſpecially as the Maſter had already ſworn upon interrogatories that the ſhip was condemned by the Judge of the Admiralty of Maſſachuſet's Bay as a prize on account

account of her having Engliſh property on board, although ſhe was then the property of ſome Quakers at Philadelphia.

In reſpect to the claims of Creighton, Ray, and Moncrief, the Judge gave his opinion in ſubſtance nearly as follows:

The precedents quoted ſhow plainly that there are caſes out of the view of the prohibitory act. I hear of precedents with pain, as well as this audience, when it is recollected by whom thoſe precedents were made. The utmoſt reſpect is to be paid to great names, but I muſt judge in every caſe for myſelf, according to my own conviction and ideas. It is eaſy to decide, when an act of Parliament marks the line by which a Court is mechanically to be guided. When there is no act of the Legiſlature, or when it does not extend to the ſubject in diſpute, his Majeſty's commiſſion directs the Judge of this Court to proceed in a ſummary manner and according to the equity of the caſe. The late Judge, in the caſes of Governor Bull, Angus Macaulay, Millegan, Carne, and Savage, ſaid he would be bound by no precedents; I ſay the

ſame; but I will be bound by the principle of a precedent, and not by the letter.

In the caſes of Governor Bull, Angus Macaulay, and Millegan, it was agreed, that the ejecting and abjuring acts of the pretended American ſtates being ſubſequent in point of time to the prohibitory act of the Britiſh legiſlature, the caſes of the American exiles *under certain circumſtances* are out of the view and line of the prohibitory act; conſequently their effects, when taken as prize, may be reſtored. Savage's caſe has been quoted to ſhow that the effects of Americans coming over may be condemned. Though counſel do not miſrepreſent caſes, yet they are apt to ſtop half way. In Savage's caſe, there was the fulleſt evidence from a family letter, that Savage was to return to America again. His property and Carne's were alſo inſured by a rebel inſuring bank ſet up by public authority. It is admitted to be in proof that Creighton had the abjuring oath tendered to him, and refuſed it; and that he has a bill of lading to verify his indigo. It is objected to Ray, that it does not appear that the oath was tendered to him; and

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the ſame objection is made to Moncrief. It is alſo ſaid, that neither Moncrief, nor Ray, came under any deſcription as being public officers of the Crown, or being of any religious or liberal profeſſion. Now, as to Ray, he is a ſchoolmaſter, which in the colonies is a very important and reputable profeſſion; he brings with him his wife and children, which proves he has quitted all domicility in the colony. He has a bill of lading of his property. Moncrief has the ſame. And as to Moncrief, the letters from Mr. Ancrum and Mackenzie ſufficiently ſhew him to be exiled for ever from the colony. Ancrum's letter is from a ſenſible, cool man. It refers his correſpondent to Mr. Moncrief as having left the country, and merits notice as a picture of the miſerable ſtate of it. Mr. Andrew Mackenzie, in his letter to Mr. Redhead, at Nantes, ſays, "this goes by my worthy friend J. "Moncrief, who leaves this place, I am "afraid, for ever." It is urged that the ſeveral permits to the Maſter, iſſued from the pretended Secretary's office, to take on board theſe unfortunate paſſengers, ſhow that they have complied with the law of the

the pretended government, and therefore, it is ſaid, they are its friends.

It is cruel to draw ſo falſe a conſequence. The fact proves the contrary. For what is the law which they have complied with? It is this, "abjure your King, your country, "curſe God and them," or do what? Depart: begone! *Depart* is the law referred to by the permits; and this law of departing from all that is dear to man have the unhappy exiles complied with. "Thoſe who are not with "us are againſt us," is the principle of this act of ſtate: "Return not again hither; if you "dare, you die." Death is the alternative, whether you ſtay or return, "for you "ſhall exerciſe no means of living here." It matters not whether the oath is tendered or not. The words of the act are, "Every "perſon neglecting or refuſing to take the "oath within the time limited by this act, "and remaining in the ſtate more than "ſixty days thereafter, ſhall be incapable "henceforth of exerciſing any profeſſion, "trade, art, or myſtery, or of buying, ſel- "ling, or acquiring, or conveying any "property whatever; and all property ſo "bought or ſold, acquired, or conveyed,

"ſhall

" ſhall be forfeited, and diſpoſed of, one " half to the informer, and the other half " to the ſtate, and the perſon or perſons " ſo buying, ſelling, acquiring, or convey- " ing as aforeſaid, ſhall likewiſe forfeit the " ſum of one hundred pounds current mo- " ney to the ſtate, for every act and thing " which he or they ſhall do, which he or " they is or are hereby diſqualified from " doing."

The very time to collect their debts, to diſpoſe of their effects, and for their attornies to remit, is limited to a very ſhort period of a year, on failure of which alſo is a forfeiture of the effects to the ſtate; and to this limitation is added another law, that no cargoes, although as remittances, ſhall be permitted to go to Great Britain.

This abominable law, if law it can be called, is equal to that of the Romans, when they baniſhed a citizen by the interdiction of water and fire, and all the neceſſaries of life. The wit of man could not have deviſed a more cruel, penal ordinance, to gratify the purpoſes of the vileſt of paſſions, ambition and avarice, in their utmoſt extent. No man is to be allowed capable

of

of any civil act, unleſs he carries the mark of the beaſt of rebellion in his forehead. It is wonderful, that their religious enthuſiaſts have not found out the completion of the prophecy in the Book. If the multitude had ſenſe enough to reflect, they might eaſily diſcover the real principles and intentions of their leaders in framing this ordinance, which is dipped in blood. Their purpoſe is plain, that of getting rid of every oppoſer; but this madneſs will cure itſelf, we may venture to pronounce, with a very little foreſight; whatever is contrary to all natural juſtice, and the general feelings of mankind, can never laſt long.—This ordinance confounds all civil rights, and tears aſunder the deareſt ties of human kind; and the true tendency of it, in its fury, is either to *uncolonize America*, or it will occaſion a ſenſe of general diſtreſs, with the connections of families, to bring back a reſtitution of the former government.

There is a wildneſs in this law, that marks ſtrongly the real character of the Americans; it is perfectly ſavage, and breathes the ſpirit of perſecution, impreſſed with which, (as having been perſecuted

or perſecuting) the laſt ſettlers from hence went forth to ſow the ſeeds of that civil war, which they left behind them, and of which now Great Britain reaps the harveſt; it is among the many proofs we find in the hiſtory of mankind that conquerers and new ſettlers in all ages have adopted, in a very great degree, the manners of the ancient inhabitants, and taken even the features, colours, and temper of the climate.

The picture of American miſery, drawn upon thoſe people by their new modellers of government, has been ſtrongly painted in many letters read in this place, as well as in thoſe now before the Court: and it is for this tyranny, that the curſe in the book, denounced upon the Jewiſh nation, which drove out others for their crimes, and planted itſelf in their room, ſeems to be compleating faſt on the Britiſh rebellious colonies. It is for this cauſe (the imitation of like cruelties) "that the land ſhall vomit forth "its inhabitants:" This is the ſacred language, which may appear coarſe to modern and refined ears, but it is ſtrong and expreſſive. At this moment America is ſick; ſhe is in agonies. When therefore the

ejected, unhappy children fly to the mother country for protection, ſhall ſhe not open her arms to receive them? or ſhall they be the prey to their fellow-ſubjects the captors, naked, exiled, and defenceleſs? To be driven out from all that is dear, and to be the ſacrifice by turns of both friends and foes, is the fate of the beſt of men in the midſt of civil diſſentions. A civil war is a dreadful ſcene, too much for human nature to bear, or to expreſs. Can this Court want any better ground for a reſtitution to the unhappy ſufferers in this caſe, than the evidence of the Maſter (who is himſelf a declared ſubject of the pretended States, and appears no friend in this cauſe) he ſays, that all theſe poor people were *finally deſtined to England*, and that they are all ſubject to King George the Third.

This being ſo, what muſt be their fate if they return?—Death. The rebel act of State has pronounced the ſentence; they are to ſuffer death *as traitors*. The unhappy men have poſitively ſworn, that the property claimed by them is not for the purpoſe of trade, but for their neceſſary ſuſtenance, and that they have left all the

reſt

reſt of their effects behind them, to the mercy of a tyrant government, in order to live under the milder one of the parent country. Shall this Court then condemn them? Will this nation be equally mercileſs with the American government? Shall we not leave them a drop of water, and a bit of bread? It is no ſuch great diſadvantage to their cauſe, as in Governor Bull's and Telfair's caſes, that they do not bring certificates of oaths tendered, and their refuſals, from members of the rebel ſtates. It was argued, in thoſe caſes, that ſuch certificates looked like an obvious method of evading the prohibitory act, and carrying on a rebel trade. Their families, their eſtates, their trading concerns, it was ſaid, are connected, and they will cover for one another. Governor Bull brought over great property, and left a large eſtate behind him. Telfair brought over a cargo of 20,000 l. value in tobacco. He was documented by certificates from the members of the Congreſs, that he had refuſed to ſwear. He had General Howe's licence; it was thought a weak part of his cauſe: but he brought over his property (he ſwore to it) and his

perſon together. Whenever the perſon and the property have not come together, the Court, in former caſes, condemned the effects which came in a different ſhip, although claimed as a remittance, after a period limited by the act. Diſtinctions of quantity were ſet up in the firſt inſtances, but theſe were afterwards over-ruled: for how was it poſſible to draw the line? If a man brought his all *with him*, and was ejected from America ſo as not to be able to return, it was held enough to ground a ſentence of reſtitution. It is very true, the prohibitory act is a very ſevere law. It was meant *in terrorem*, and it was expected to have had a happier effect, to produce ſubmiſſion; it unfortunately produced an increaſed reſiſtance. The declared independence of the American Congreſs took the firſt lead, and gave birth to a law here, that carried with it an actual attainder of all the enumerated colonies in rebellion. The effects of all the inhabitants, without diſtinction, and their ſhips going to and from thence, were declared confiſcable as the goods of open enemies. It was ſaid, that nothing could be more unjuſt than to confound the innocent and the guilty. It was replied, " that

" it

" it was impoſſible to make diſtinction; that " in the government of the moral and na- " tural world, the juſt ruler of the univerſe " ſuffered ſtorms and lightening to fall " equally on the good man and on the ſinner; " the end juſtified the means, and the " ſufferers muſt turn their reſentment upon " thoſe men who are the cauſes of their " misfortunes." A time, however, has come, when a diſtinction may be made. No one, at the inſtant of paſſing that act, could foreſee what has ſince happened; an event out of the contemplation of the legiſlature, that the American Congreſs would afterwards enact an abjuring and ejecting law.

If the captors think this Court has done too much in former precedents, or that I do too much in adhering to the principle of thoſe precedents, which, to my conviction, are founded upon juſtice and mercy, the captors muſt appeal.

Suppoſing that by the prohibitory act, there is any power of appealing from this Court (which is not expreſſed); and if the prohibitory act is inſiſted upon in its utmoſt ſeverity, the ſenſe of that law will be beſt explained in another place. I hold this

caſe

caſe to be *out* of the act. After all, if I am miſtaken, I ſhall be happy in the error; and I can only refer, ſo far as regards this Court and my own opinion, to the expreſſions and feelings of the old Roman,

Si pugnent ſententiæ, valeat mitior.

"When oppoſite opinions are equal, humanity ſhould prevail."

The Judge accordingly pronounced the ſhip to have belonged to Britiſh ſubjects, condemned the rice on board as the property of rebel Americans, but reſtored the ſeveral quantities of indigo and tobacco, claimed as the property of Creighton, Ray, and Moncrief, who were deſtined to England, not being for the purpoſe of trade, but for their neceſſary ſupport, and not being within the view and penalties of the ſtatute.

Wedneſday,

Wedneſday, December 9, 1778.

Le ZACHARIE *and La* VIGILANTIA,

SWEDISH ſhips, were reſtored with freight, and all expences charged on the cargoes. Condemned the cargo of tobacco freighted for the Farmers-General in France. Further proof of the reſt of the cargo.

The GOEDE HOOP,

A Pruſſian ſhip, was reſtored with freight, and all charges to be placed to the account of the cargo. 200 barrels of potaſh, on account and riſk of Meſſrs. Fizeaux and ſons, at St. Valery in France, and 36 caſks for Monſ. Hoquet, were condemned. Time allowed, till the firſt day of next term, for any neutral ſubjects who ſhould be intitled to the reſt of the cargo, to claim, ſpecify and prove their property, the bills of lading being defective.

Friday,

Friday, December 11, 1778.

The HOPE,

AN American ſhip, with pitch, tar, indigo and rice, and deer ſkins, taken by the Surpriſe, an uncommiſſioned veſſel, of Folkſtone.

The ſhip was claimed by Sir Edmund Head, Mr. Heſt and Mr. Kincaid, who had bought the ſame to convey themſelves and their properties from South-Carolina, being driven from thence by the abjuring ordinances. It was alſo claimed by a merchant of London, Mr. Bell, as having been his property, under the name of the True Briton.

There were alſo a great number of unfortunate ſufferers who claimed their properties. This ſhip, after being taken by the Folkſtone cutter, fell in with the Griffin and Speedwell ſhips of war, who aſſumed a right as captors of ſhip and cargo. An appearance was alſo for the Lords of the Admiralty, as for a droit. The Judge rejected both the pretenſions of the King's ſhips, and of the Lords of the Admiralty; reſtored

reſtored the ſeveral parts of the cargoes claimed by the American Britiſh ſubjects refugees; and ordered Mr. Bell to prove his property in the re-capture more fully. Salvage to the cutter.

The HOPPET,

A Swediſh ſhip, bound to Nantz, was reſtored to the Swediſh claimants, with freight and all reaſonable expences to be charged to the account of the cargo; and the neutral claimants, on account of the property not being verified by the Maſter and the ſhip's papers, and particularly the clearances not mentioning but a very ſmall part, farther proof was decreed; and the naval ſtores on board, cannon balls, pitch, tar, ſail-cloth, and copper-ſheets for ſheathing, were ordered to be ſold for the uſe of his Majeſty's navy, on a fair valuation by merchants, to be named on each ſide, chargeable on an average with the expences of both captor and claimant.

The ENEKEIT,

A Daniſh ſhip, reſtored, with freight and all reaſonable charges placed to the account of the cargo, which, being French, was condemned.

The BEE,

The Judge refuſed to hear affidavits to juſtify a captor from coſts, who had not examined his witneſſes, and pretended to have loſt the ſhip's papers, yet offered reſtitution without coſts, which the other party would not accept without coſts. The Court ſaid, the unity of a prize cauſe ought not to be divided. When the ſhip's papers and examinations came regularly before the Court, it would judge of coſts, *uno inſtanti*; and immediately ordered the witneſſes, the crew of the captured veſſel, to be produced, and the Judge adminiſtered the oath himſelf. He ſaid, there was ſtrong ſuſpicion of colluſion on both ſides from the captor's own opening, and he would make parties proceed regularly; much danger lurked ſometimes under propoſals of conſent, and every thing grew ſuſpicious, when parties go out of the way. In American caſes, in particular, it was obvious how many contrivances are uſed to ſupply the enemies of this country.

Friday,

Friday, December 18, 1778.

The HET FORTUYNE,

A DUTCH ſhip, was reſtored, bound from Port Maurice to Havre de Grace, taken the 20th of September, 1778, by the privateer ſhip the Molly. The queſtion as to coſts and damages was reſerved till next Court on petition of both parties.

VROW MARGARETTA,

A Hamburgher ſhip, bound from Hamburgh to Bayonne, a general carrier ſhip. The ſhip was reſtored with freight, and all expences charged on the cargo, (and the Maſter's own adventure was alſo reſtored) neutrals aſſigned to prove their property not verified by the Maſter.

The XAVIER,

A French ſhip, taken by the Swallow and Speedwell, private ſhips, before the date of their letters of marque, was condemned as a droit of Admiralty, and the takers are to petition the Lords to refer them to the Court to be rewarded.

The ZELDEN RUST,

A Dutch ſhip, with a cargo laden at Marſeilles for Havre de Grace, was a very particular caſe. On the 17th of July ſhe met with a Spaniſh man of war, the Captain of which obliged the Dutchman to take on board gold and ſilver to the amount of eight hundred thouſand dollars, with a Spaniſh ſupercargo, and to carry them to Havre. This ſhip was taken by the Fortune privateer. The Dutch Captain claimed his ſhip and the cargo as privileged by treaty, and ſeveral Spaniſh ſubjects claimed the gold and ſilver. The Judge reſtored the ſhip and cargo to the ſeveral claimants, and condemned the Captain in full coſts and damages.

JONGE GUILLIAM,

A Hamburgher, taken by the private ſhip Active. Ship was reſtored with freight, and all expences charged on the cargo. Neutrals to prove their property not verified by the depoſitions. Copper ſheets to be ſold to his Majeſty.

La

La MIGNONE,

A recapture. Reſtored the ſhip to Britiſh claimants, with ſalvage to the captors. Cargo condemned as a droit of Admiralty; the Captains of the private ſhips Defiance and Conway not having letters of marque.

JUFFROW ANNA GEDTRUTH,

A Hamburgher, general carrier ſhip, reſtored with freight, and all expences charged on the cargo. Neutral laders to prove their property, not verified by depoſitions of the Maſter. Sail-cloth, deals, and copper ſheets to be ſold for his Majeſty's uſe.

The BEE,

Reſtored to Britiſh ſubjects on hearing the examination, and the queſtion of coſts and damages reſerved by petitions of both parties, and the captor to bring in the ſhip's papers.

Wedneſday,

Wedneſday, December 9, 1778.

The RENARD.

THIS was a veſſel firſt taken by the French, carried by them into Havre de Grace, condemned judicially, and by them fitted out as a privateer; retaken by the Lark privateer. A claim was given by one Mr. Lad and others, as their property. The French witneſſes depoſed, that ſhe was an Engliſh prize: objection was taken, by the Counſel for the captors, to the identification, there being a variation of tonnage between the French papers and the affidavit of the claimant. But the great queſtion was, Whether (this veſſel having been compleatly in the enemy's port and poſſeſſion, and condemned in France) the property of the original Britiſh owner was not entirely defeated; and if not, that the quantum of ſalvage to be allowed was to be conſidered? becauſe there is no prize act, in the preſent caſe, of hoſtilities with France; and that the American privateer act gives only one-eighth even to privateers, which in former prize acts, in time of war, uſed always to give to privateers a ſalvage proportionable

portionable to the number of hours any ſhip, retaken from the enemy, ſhall have been in the enemy's poſſeſſion; although men of war had never more than an eighth ſalvage. In ſupport of the argument, that no ſalvage was due, quotations were made from Grotius, who conſiders occupancy by the enemy for twenty-four hours as a diveſting of the original property, and as good a transfer, by the law of nations, as bargain and ſale by the civil law.

Bynkerſhoek, a modern Dutch writer, now much in eſteem and faſhion, oppoſes the ſentiments of Grotius, and ſays, that an occupancy of twenty-four hours is not ſufficient; but there muſt be ſuch a bringing into port, as that all hope of recovery is loſt with the ſhip.

This idea of Bynkerſhoek was ſaid to agree with the common law of England, as laid down in Brooke's Abridgement, Tit. Property, forfeiture 38: — "If an enemy "takes an Engliſhman's goods, the former "owners (ſays he) ſhall loſe his property; "and it becomes indefeaſably veſted in the "firſt taker, unleſs it ſhall be retaken the "*ſame* day, and the firſt owner puts in his "claim

" claim before ſun-ſet." From whence a concluſion is to be drawn, that a poſſeſſion of a certain time, even without a ſentence, defeaſes the firſt owner.

The Court obſerved, that there is ſomething ridiculous in the deciſive manner each lawyer, as quoted, had given his opinion. Grotius might as well have laid down, for a rule, twelve hours, as twenty-four; or forty-eight, as twelve. A pedantic man in his cloſet dictates the law of nations; every body quotes, and nobody minds him. The uſage is plainly as arbitrary as it is uncertain; and who ſhall decide, when doctors diſagree? Bynkerſhoek, as it is natural to every writer or ſpeaker who comes after another, is delighted to contradict Grotius: his rule is, that the prize muſt not only be brought, *infra præſidia*, into the port, and under the guns of the enemy, but ſo that all *hope* of recovery is loſt. But this rule will not do, it is plain; becauſe the fact is, *the ſhip is recovered.*

As to Maſter Brooke's rule, there is neither ſenſe nor juſtice in it. The property, he ſays, is loſt between an Engliſhman and Engliſhman, unleſs it is retaken in twelve hours;

hours; and beſides that, it muſt be reclaimed before ſun-ſet. What! when the original owner at land knows nothing of his ſhip being taken by the enemy at ſea? and how, and where, and from whom, can he reclaim her? From the enemy? The rule is nonſenſical, for it is impoſſible. I take the general law to be, and it is equity, that a Britiſh ſubject has always a right to his own again, when found in the hands of another Britiſh ſubject, and can maintain his ſuit for it, paying a ſalvage proportionable to the expence and danger, and other circumſtances.

This doctrine is juſt, in the relation in which one Britiſh ſtands to another Britiſh ſubject, and does not at all controvert the principle that a lawful enemy in war may acquire property by occupancy, and may transfer it to a third party, who is not forbid from ſuch purchaſe by any eſpecial treaty.

In the preſent caſe, the ſtate of hoſtilities is more favourable to the claimant than a declared war. What is declared then? Repriſals upon the French King, his ſubjects, and the inhabitants of his

territories. But Britiſh ſubjects generally, (the caſe of the Americans being out of the queſtion) are not to make repriſals upon one another; there is no authority for that. Clearly the American act does not extend to the preſent queſtion of ſalvage. There is no act relative to recaptures from the French. It reſts then with the Court. By what rule can it direct its diſcretion? The old war prize acts have pointed out a rule, which the Court may adopt, not as binding on the judgment of the Court, but as declaring the practice. A man of war being paid by the public, and fitted out at the national expence, had, by the act, only an eighth of the recapture, if a merchant-ſhip: but a privateer retaking, after a ſhip had been in the poſſeſſion above 96 hours, was to have a moiety; and a man of war, as well as a privateer, retaking a Britiſh ſhip, the ſame being fitted out for war by the enemy, had a moiety. In this caſe the recaptured veſſel appears to have been fitted out as a privateer, and therefore I have no doubt to decree a moiety as ſalvage, and reſtore the ſhip to the original owners; the variation of the tonnage is accounted for by the

the difference of the French and Engliſh computation, and admitted by the counſel.

The LUCRETIA.

This ſhip was an American ſhip, firſt taken in her paſſage from Charles Town to Surinam, by the Thynne packet-boat, having a commiſſion of marque. The commander of the Thynne put ſix or ſeven men on board, and a prize-maſter. They kept poſſeſſion ten days, and were afterwards taken by an American privateer, who kept poſſeſſion thirteen days; when being met (the Thynne's people ſtill remaining on board in her) were directed to Boſton by the Seaford, Cygnet and Speedwell, his Majeſty's ſhips; they recovered her again from the enemy. It was inſiſted on their part, that they were to be conſidered as the only captors, and that the Thynne packet-boat had been diveſted by the poſſeſſion of the enemy. It was alſo obſerved, that the American act, which reſtores all Britiſh ſhips to their own original owners, and gives to the takers, whether men of war, or other veſſels under his Majeſty's

protection, only one eighth for ſalvage, relates only in terminis to ſuch ſhips which ſhall be proved to have belonged (that is originally) to any of his Majeſty's ſubjects of Great Britain and Ireland; that therefore this ſhip, the Lucretia, having been an American ſhip taken by a commiſſioned packet, and loſt again, being recovered on the 3d inſtant, was not a recapture within the ſtatute. Many of the ſame arguments were uſed again, as in the caſe of the Renard. The caſe of the Magdaleine, in the laſt war was quoted: it was a French ſhip, taken by the Beckford privateer near Jamaica, and retaken by a French ſhip, the Hereuſe, on the 6th of April; but eight days after was recovered again by the Cornwall privateer. Sir Thomas Saluſbury, the then Judge, decreed the whole to the recaptors; and this he did upon the ſtrength of the ſame opinion given by Sir George Lee in the caſes of the Notre Dame and Sarah Smith, referred to him as counſel in 1747. It was argued, that no property veſted in the firſt taker, becauſe the poſſeſſion was not compleat; the prize having never been brought *infra præſidia*, much

leſs

leſs condemned; and the counſel quoted the caſe of Goſs v. Withers, in Burrow's Reports, volume 2. page 80. 90; in which an Engliſh ſhip, having been eight days in the hands of the French, the inſurers claimed the whole again, upon a recapture; and the queſtion was, Whether eight days poſſeſſion had diveſted the original owners? But it was the opinion of a very great man, that no property of an Engliſhman is changed till after condemnation: but this doctrine was, as of common law, *ſublato ſtatuto*, the prize act concerning recaptures being laid out of the caſe.

The Court thought this caſe of the Lucretia a new and refined one, and that the arguments were equally refined. It was agreed on all ſides, that this kind of recapture was *out* of the prohibitory ſtatute. The argument uſed to prove that a compleat property did not veſt in the Thynne packet the firſt taker is two edged; it cuts both ways: for if a compleat property did not veſt in the Thynne, becauſe the Thynne did not carry the prize into port, the ſame reaſon held againſt the Americans diveſting the Thynne; for they never

never carried the veſſel they retook into port. The queſtion is not, whether a compleat property veſted in the Thynne upon the taking, but whether a property veſted enough to have entitled the Thynne upon condemnation whenſoever.

In all former prize acts ſeveral limitations of time were eſtabliſhed with a ſingular nicety ſcarcely capable of proof, to aſcertain the quantum of ſalvage. If a veſſel was retaken after being in poſſeſſion 24 hours, the ſalvage was to be one eighth of the value; if above 24 hours, and under 48, a fifth; if above 48, and under 96, a third part; if above 96, a moiety. All this was borrowed from a placaert of the Dutch States, dated 6th June, 1702, and the ſame rule is laid down by their countryman, Voet de Jure Militari, p. 299.

One ſhould imagine that the inventors of theſe diſtinctions and diviſions, who doubtleſs were very ſagacious perſons, expected captors to have ſtop-watches, and to be the honeſteſt people in the world in producing them. The diviſions of time in thoſe acts to mark the quantity of ſalvage ſeem as abſurd, as in the acts which ſome

years

years ago eſtabliſhed the juriſdictions of our new Vice Admiralty Courts in America, and limited their juriſdiction, not where the prize ſhould be brought in, but by minutes of longitude and latitude where the prize ſhould be taken. One ſhould imagine, that theſe nice diſtinctions were only meant to increaſe litigations: ſo that ſo far from the Court agreeing with the counſel, that it was an over-ſight in the framers of the American act to omit the diſtinctions of time, it ſhould ſeem that they wiſely omitted theſe diſtinctions, and that the ſimpleſt rule is the beſt and moſt equitable.

Now in regard to the general law, no property of any prize veſts in the captors until condemnation. All prize of war veſts originally in the ſtate, or in its great repreſentative, wherever repreſentation reſides; till it is granted to the captor. And the poſſeſſory right, as was obſerved by one of the advocates, is only *ſub modo*. This inherent original right of prize is clearly in the Crown, and ſo by the King's proclamation after adjudication to the King in his Majeſty's name, and not otherwiſe. Ships and goods taken by the King's ſhips, being finally

finally adjudged lawful prize are granted to the officers, ſeamen, &c; and veſſels taken by private ſhips having letters of marque are granted to be ſold and diſpoſed of by the merchants and fitters for their own uſe and benefit, after adjudication, and not before. Among the antient Romans the amount of all captures in war was brought into the public treaſury. If we look into the American letters of marque act, the words clearly give an intereſt in the captors on board ſhips with letters of marque, which intereſt is veſted upon the *taking*. The words are "*Such ſhips, &c. ſo to be* "*taken* by, or with ſuch ſhip, according to "ſuch commiſſion, being firſt adjudged law-"ful prize, ſhall wholly and entirely belong "to the owners of ſuch ſhips and perſons "on board the ſame;" and then follows an excluſive clauſe in very ſtrong terms, to take away all right of the Crown, Lord High Admiral, and Commiſſioners to any ſhare or part therein. The great object of the legiſlature was to encourage *taking*, and this principle, will eaſily decide the preſent queſtion. There is alſo another reaſon in favour of the Thynne packet-boat, which has not been

been taken notice of, which is, that the Thynne taking the Lucretia was the primary cauſe of the Lucretia being alſo taken ultimately by the King's ſhips. The Lucretia was bound from Charles Town to Surinam, when taken by the Thynne, her voyage then being changed for Falmouth, by order of the commander of the Thynne, in her way thither ſhe was retaken by the Americans, and then by them deſtined for Maſſachuſett's Bay, in which courſe ſhe fell in the track of the men of war. This was a very proper caſe to have been ſettled by private agreement between parties; but as they have determined to apply to this Court for a deciſion, we muſt endeavour to ſquare the decree by the equity of the caſe, and yet conformably to the ſtile of the Court. Let the officers and crew of the Thynne be pronounced to be the captors of the Lucretia, recovered by the Americans. Let the officers and crews of the King's ſhips, the Cygnet, Swallow, and Speedwell, be pronounced to be the recaptors; but under the circumſtances of this caſe I am of opinion the latter are intitled to a ſalvage of the ſhip and cargo equal to the ſhare of joint captors.

Friday, January 8, 1779.

BRITA CÆCILIA,

A SWEDISH ſhip: the ſhip reſtored, and the cargo of iron, tar, pitch, and deals, for the account of Meſſrs. Du Jardin Pruſſe, of Paris, condemned. Deſtined from Elſineur to Breſt and Nantz. Freight and all reaſonable charges allowed to the Swediſh carrier.

WYNBERG,

A Swediſh ſhip, bound from Bourdeaux to Stockholm: ſhip reſtored, with the Maſter's adventure, and all expences charged on the cargo; the greateſt part of which being coffee, indigo, ſugar, and paper, laden on board for the account of perſons reſident at Bourdeaux, as well as tobacco, with acquittances from the French government, intitling the laders, as French ſubjects, to drawbacks, together with tobacco, in like manner, was condemned.

Le

Le PERLAN,

A Swediſh ſhip, reſtored: cargo, deals and pipe-ſtaves, claimed by Swedes, and pitch and tar for the Berlin Society, were ordered to be ſold for the uſe of his Majeſty's navy, upon a valuation by merchants named on each ſide, for the profit of the claimants; all expences on both ſides to be charged to the buyer.

The BONAVENTURA,

A Swediſh ſhip: the cargo being in a periſhable condition, the Court, by agreement of both parties, ordered the cargo to be ſold and depoſited.

The MINERVA,

Was claimed as a Portugueſe ſhip, and the cargo as being privileged on board a Portugueſe veſſel. It was clear in evidence, both from Portugueſe and Frenchmen, that the lading was Britiſh American tobacco, and Britiſh package, and the ſhip came with it to Fayal from St. Domingo, and the cargo was never unloaded at Fayal, although ſearched, and duties were paid there. The

ſhip was French built, and there was no Portugueſe paſſport for the ſhip. Several Frenchmen came in the ſhip from St. Domingo to Fayal, and one of them was on board at the time of the capture, Monſ. La Confourgue. This man on his examination gave in his name as Jean Auger, and it appeared he had been travelling in Britiſh America; and his giving in a falſe name was ſworn to by the Portugueſe maſter and mate. His identity was alſo proved by a verbal proceſs, and by an inventary of a deceaſed perſon's effects on board the ſhip, made in the French language, and ſigned by Jean La Confourgue, and Pierre Queiron, another Frenchman. The deceaſed perſon was a boatſwain, who was drowned after the capture, and for whom as a ſeaman, agreeable to the French laws, the owners of the ſhip were anſwerable to the French government, which enregiſters all ſeamen. Although La Confourgue, otherwiſe Auger, ſwore poſitively that he had no intereſt in the ſhip at or before her arrival, or during her ſtay at Fayal, it was ſaid that this very ſame La Confourgue, and another Frenchman, with the aſſiſtance of the

the French Conſul, ſold the ſhip to one Joſeph de Macedo, a Portugueſe, for 800 mill-rees, equal only to 200l. ſterling; yet it appeared by a bill drawn on Wandewal, of Amſterdam, that the very freightage to be paid was to be 1600 mill-rees, and that he produced an order from the reſt of the French owners to ſell the ſhip. The charter-party was for a freight double the value of the ſhip made at Fayal, and was ſigned not only by the French, but the Engliſh Conſul, Graham. There was a certificate of the ſale of the ſhip by a Portugueſe Judge for this very inadequate price, which they alſo legalized; that is, certified to the Judge's ſignature; but no proof of the ſale or transfer of the cargo; and the maſter ſwore that the ſale of the ſhip only was *truly made*. It was very remarkable that there was a Portugueſe paſſport for the perſons on board as paſſengers, and not for the ſhip. Jean Auger was there deſcribed under the name of Joas, (abbreviation for Joannes) La Confourgue. There was not a ſingle Portugueſe paper on board upon oath, and the ſhip and La Confourgue were deſtined for Amſterdam.

dam. On board this ſhip was a very extraordinary letter by the Engliſh Conſul, Graham, addreſſed to Mr. Sykes, a merchant in London, recommending the Maſter Caneoto to him; this letter, notwithſtanding the above deſtination was underwritten, "*this goes viâ Liſbon.*" It recited that this ſhip had put into Fayal for water and biſcuit only; that the tobacco was taken as a debt. Cartage was an article of the charges at Fayal, although it was never landed; it was ſaid in the letter that the Frenchmen who came in her were frightened at the report of a war, and had ſold ſhip and cargo to the Portugueſe at Fayal; in caſe the ſhip ſhould be taken by any hotheaded Captain of a privateer, he recommends Caneoto the Maſter to Sykes; ſo that Graham clearly apprehended the hazard of the ſhip being made a prize, and meant to protect it as well as he could. By this letter it did not appear, or by any public inſtruments, or other evidence, that Macedo or Ribeiro had purchaſed the cargo, nor who Ribeiro's partners were; and the letter of Graham appeared clearly to have been fabricated very early, as for a Liſbon voyage,

voyage, although it was afterwards declared to be for Amſterdam *or Dunkirk*. The fraud indeed was ſo palpable, that there was no way thought of for overturning the evidence of the Maſter, but by attempting, after the examinations had been taken on the 19th of September, 1778, and were publiſhed and ſeen, to offer an affidavit and complaint of the Maſter Canoto ſo late as the 29th of December; and after a ſecond claim had been given, November 11, by Amſink for Macedo and Ribeiro; objecting to the interpretation of his depoſition to three interrogatories only; not however denying the truth of all the reſt of his depoſitions, or that the whole of the interpretation was falſe; nor charging the Commiſſioners, or Interpreter, or Actuary, with undue influence or corruption, nor even the Interpreter with not underſtanding the Portugueſe language; and the Maſter prayed that he might be examined over again on the ſtanding interrogatories. In this complaint the Portugueſe Maſter was not joined by his Mate, or any one of his crew who were examined; nor did even La Conſourgue join with him; but on the con-

tra-

trary, the Commiſſioners reported to the Court, that the evidence was regularly and carefully taken, and affidavits were made by the Interpreter and the Actuary. By theſe it appeared, that the depoſition of the Maſter was carefully and diſtinctly read over to him by an Interpreter in the preſence of the Commiſſioners and Actuary, and as carefully explained to him before he ſigned it; that the Interpreter was, as it *is always done*, ſworn faithfully to interpret; that he was a native of Spain, and perfectly well acquainted with the Portugueſe language (which is a dialect of the Spaniſh;) that Caneoto declared he thought himſelf happy to have met with a perſon who underſtood the Portugueſe language ſo well, and actually employed him in ſeveral little affairs of his own, after the depoſitions were made; that the depoſition was read by him three times over to Caneoto before he ſigned it; and that he heavily complained of the conduct of La Confourgue, as the cauſe of all his misfortunes; laſtly, that the Interpreter, Mr. Harris, was a man of character and reputation, and a clergyman of the Romiſh church, and conſequently

ſequently a falſe interpretation of the depoſitions of foreigners of his own perſuaſion, muſt have been ruinous to his intereſts and reputation. It was alſo remarkable, that Caneoto's depoſitions, owning the cargo to be French property, were exactly fitted to the firſt claim given in the cauſe for the cargo generally, as *privileged* on board a Portugueſe ſhip; implying it therefore *prima facie* to be French.

The caſe of the Monte Chriſti ſhips, which is a Spaniſh port near the French one of St. Domingo, was urged, in which the ſhips and cargoes were condemned upon appeals laſt war, whenever it appeared in evidence that there was a French ſupercargo on board. The whole therefore of this affair appearing a fraud practiſed upon the Portugueſe government, and intended to impoſe upon the Britiſh, and a manœuvre of La Confourgue, otherwiſe Jean Auger, aſſiſted by the French and Engliſh Conſuls at Fayal, the Judge condemned the ſhip as a French ſhip, and the cargo as French property; recommended it to the captor's generoſity, to let the Mate Lopez, who had given a very fair and honeſt evidence, have

his cheſt and property; and to Pereira the Boatſwain, his adventure of a little wine, and a few fur ſkins. The Maſter had been confined as a priſoner of war, under the idea of a perſon ſerving on board a French ſhip; but had been releaſed by the favour of Government.

The Judge remarked how neceſſary it was become for the Court of Admiralty to look very ſtrictly into the part taken by Britiſh merchants, when even a Britiſh Conſul had diſgraced himſelf ſo much as to make a part of the machinery in this fraud: and that foreign Miniſters would do well to be very cautious how they ſuffered themſelves to be teized and impoſed upon by the falſe repreſentations of the low people, Maſters of veſſels, who reſort to them, and who endeavour to make the moſt reſpectable characters in the *corps diplomatique* inſtruments of attempting to protect frauds upon both governments. Memorials are preſented, Miniſters are drawn in to be agents; and inſtead of the deciſions of cauſes in the regular courſe of juſtice being forwarded, as they otherwiſe would be, they become, by the interference of Ambaſſadors

baſſadors and Envoys, delayed, perplexed, and ſubjects of mutual complaints and diſtruſt between Courts the moſt friendly diſpoſed to each other. It was clear that Caneoto, the Portugueſe Maſter, was tampered with by La Confourgue, after the depoſitions were ſeen.

There is reaſon to believe that the Maſters of many neutral veſſels, when they get home, will be ſeverely puniſhed by their own governments, for having made repreſentations deceiving their Miniſters at this Court.

The JEAN *and* SAMUEL,

A Dutch ſhip, bound from Nantz to Oſtend, with innocent goods of French ſubjects; the privateer who took and detained her, on no better pretence than that there was an eraſure in the French paſs, was condemned in full coſts and damages, and reſtitution decreed of ſhip and cargo.

The DAME CATHARINE DE WORKEEM,

A Dutch ſhip, laden with tobacco from Bourdeaux to Dieppe; ſhip and cargo re-

ſtored, and the privateer condemned in all coſts and damages.

The Judge obſerved, that the duty of the captors was to produce the Maſter of the captured, and others of the crew, agreeably to the articles of the King's inſtructions, immediately on coming into port, to the Judge's Commiſſioners, and to bring in all the ſhip's papers at the ſame time; and that if any Maſter of a foreign ſhip is abſurd, and refuſes to deliver up all his papers, or will not be examined, then the captors are at the ſame time to make complaint of that fact to the Commiſſioners, who are to report to the Judge, and a monition is to be prayed againſt the neutral to compel the delivery of the papers, and his undergoing the examination preparatory to adjudication, agreeably to the common law of all Admiralty Courts in Europe; and ſuch refuſal being contumaciouſly perſiſted in, attachment and commitment to priſon will follow for a contempt, with a loſs of coſts and damages, in caſe ſhips or cargoes ſhould be reſtored to the owners, who muſt look to their own Maſter for the loſs of their expences, in that caſe.

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The POSTILION,

A Lubeck ſhip, was reſtord to the Lubeckers and the cargo to M. Lienau, the owner, who, though a Frenchman, was domiciled at Hamburgh; and it appearing by evidence, and by a certificate of the magiſtrates *on board the ſhip*, that the cargo was his ſole property, though conſigned to his brothers in France, the cargo was alſo reſtored, and the privateer condemned in coſts and damages. The ground of the deciſion was, that a native of Hamburgh, reſident in France, would have his property condemned by the law of nations as an adopted Frenchman, *pro hâc vice*; and ſo the King's declaration of repriſals expreſſes it, that the ſhips and goods of perſons inhabiting the territories of the French King ſhall be ſubject to repriſals; and therefore the ſame equity operates the other way, that a Frenchman, reſident at Hamburgh, ſhould be conſidered as a Hamburgher, and have the advantage of protection, if he is the ſole proprietor.

JONGE

JONGE GERTRUYDA,

A Dutch naval ſtore ſhip; the Court reſtored ſhip with freight, and all reaſonable expences of the captor and claimant to be paid by his Majeſty, and the cargo to be ſold to his Majeſty for the benefit of the claimant, on a fair valuation, by merchants to be named on each ſide.

The PRUDENTIA,

A Swediſh ſtore ſhip, the ſame decree.

Monday,

Monday, January 11, 1779.

The MARIA MAGDALENA,

WAS a Swediſh ſhip, taken by his Majeſty's cutter the Kite, upon the 26th of Auguſt, bound from the port of London to Nantz; ſhe was laden by ſeveral merchants of French houſes of eminence in London, and the cargo put on board between the 7th of July and the 21ſt of Auguſt; cleared and ſailed out of the river Thames on the 24th of Auguſt, as appeared upon the evidence of the Swediſh Maſter and Mate. Separate claims were given, and one of the claimants very honeſtly in his affidavit confeſſed, that if the goods got ſafe to Nantz they were to be French property, but if taken upon the high ſeas, then they were to be Britiſh property. This ſhews the artful manner in which merchants cover their trade with the enemy, and the neceſſity of parties being required to prove a *continued* and *compleat* property for their own account and riſque, at the time of their lading, at the time of their being taken, and at the time of their unlading

unlading at the place of their final deſtination. One of the claimants had made an affidavit, that his goods were ſhipped the beginning of Auguſt; but being deceived, as his counſel ſaid, by his broker, he now made another affidavit, that they were ſhipped in July, on a day before his Majeſty's declaration of repriſals, which was on the 29th of July. They all of them ſwore roundly, that their reſpective cargoes were ſhipped for Oſtend, and it appeared by the evidence of the Maſter, that the ſhip was never intended for, nor did it touch at Oſtend; that he flung overboard all his Engliſh Cuſtom-houſe papers the moment he got out of the river. All the bills of lading were made out in the French language, and as of goods ſhipped at Oſtend in foreign names of Arnoldus Hoys, and others. The counſel for the claimants urged, that the preſent ſtate of hoſtilities was not ſuch a ſtate of war as to make Britiſh ſubjects liable to confiſcation, or any other legal inconvenience, for holding correſpondence with France; that nothing but a declaration of war could reſtrain the ſubject; but a declaration of repriſals went no farther

farther than to confiſcate the goods of enemies, and of others reſiding within their territories, under their protection and government, and not thoſe of Britiſh ſubjects; if there was meant to have been a prohibition of that kind, it ought to have been expreſſed, to have put Britiſh merchants upon their guard; that it was well known in the commercial world, that by the laws of France Britiſh manufactures cannot be imported directly into France without an extraordinary duty, which duty is avoided by carrying them to Oſtend, and from Oſtend to French ports; that this trade, by connivance, is greatly for the advantage of England, and as ſuch to be tolerated, being like to the profits acquired by inſuring the goods of the enemy, and the balance in favour of this kingdom. That it appears by Rymer's Fœdera in the time of Edward the third, that commerce was allowed between Engliſh and French ſubjects, although the two kingdoms were in a ſtate of war; and that no prohibition can legally take place till there is a declaration of war, which, like that in 1752, forbids the ſubject to hold any kind of correſpondence; that the

packets to this moment ſail between Dover and Calais; that it is not even clear that the French Miniſter, or his repreſentative, have quitted this country; and an order of Council for repriſals is not equal to a declaration of war in many reſpects, otherwiſe why does this Court decree that naval ſtores, laden on board neutral veſſels, before the time limited by his Majeſty's notification, and deſtined for his enemies, ſhould be ſold to his Majeſty for the benefit of the proprietors? To this it was anſwered, that the fact was clear on the part of the captors, that the ſhip had ſailed a month after, in defiance of the King's declaration of repriſals, from the port of London to the port of an enemy. If ſuch a trade was thought uſeful, upon a repreſentation to his Majeſty's Government, paſſports and letters of ſafe conduct ſhould be applied for, and licences obtained. The Maſter depoſing that the bills of lading were all colourable and falſe, is a ſufficient ground for condemnation. The preſent ſtate of hoſtilities is a ſtate of war, *de facto*, to all intents and purpoſes; and the parties claiming ſuffered the veſſel to ſail a month after

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the King's declaration, with their eyes open to all the conſequences of ſuch an act. In the caſe of the Stadt Bergen, in 1758, in the Rengender Jacob, and the Notre Dame de Grace, where Britiſh ſubjects claimed goods on board neutral ſhips deſtined for the ports of the enemy, the goods were condemned, upon this principle, that no claims can be admitted to contradict the ſhips papers, and that Engliſh merchants ſhall not conſign falſely; that the truth of the matter ſeems to be, that the preſent claimants are ſhippers and inſurers for the French, but not ultimately and truly the owners: if they are the owners, ſuch a trade is illegal.

The Judge delivered his opinion as follows: The fact is, that merchants in England have cleared out a veſſel in the river Thames falſely, and have furniſhed her with falſe bills of lading; and the Engliſh clearances have been deſtroyed. They have ſworn moſt equivocally in their affidavits, that the goods were ſhipped for Oſtend; whereas they were ſhipped in reality for Nantz, in France, the capital port for the rebel American trade. The ſeveral parcels

of goods were put on board at different times, ſome before, and others entirely after his Majeſty's declaration of general reprisals, on the 29th of July, againſt France. They could not but know alſo, being French houſes, of the King of France declaring *in terms*, on the 10th of July, that he was engaged in *actual hoſtilities* with England. This point has already been decided by the Admiralty Courts of both kingdoms. Where is the difference, whether a war is proclaimed by a Herald at the Royal Exchange, with his trumpets, and on the Pont Neuf at Paris, and by reading and affixing a printed paper on public buildings; or whether war is announced by royal ſhips, and whole fleets, at the mouths of cannon? The relative ſtate of ſubjects as to foreign nations is that of their Prince. It is a miſdemeanor of a very high nature to carry on commerce with the enemies of the Crown and kingdom. Confiſcation here is one of the civil conſequences of ſuch a conduct. Metaphyſical refinements about *bellum juſtum, perfectum, legitimum*, are ridiculous. If learned authorities are to be quoted, Bynkerſhoek has a whole chapter

to

to prove, from the hiſtory of Europe, that a lawful and perfect ſtate of war may exiſt without proclamation. But it is ſaid that this covered trade is politically uſeful for England and its manufactures; and the balance as favourable as inſuring. I do not ſit here to judge of political ſyſtems, or commercial ones, upon the ſubject of the greater or leſs degrees of poſſible profit and loſs to the community. It is ſaid that the returns will be made in French goods; that is, they will be ſmuggled into England: but at all events, between the trade of England and France, in the commutation of commodities, the balance is known to be greatly againſt England. In regard to inſuring (and I do not wonder at this argument coming from inſurers) I have a clear opinion, that as the inſuring of his Majeſty's life is not to be permitted, becauſe it may be a temptation to ſome one to take it away; ſo inſuring againſt the arms of the Britiſh nation is an inducement perpetually to betray them; it is an aiding, abetting, and comforting of the King's enemies, a diſcovery of the national councils, and a prolonging of the war, to the oppreſſion,

taxation,

taxation, and ruin of millions of ſubjects; and inſtead of a great balance of profit in favour of the whole community, it is a leſs balance turned into the narrow channel of the pockets of a few private men, who often, without property, prey and grow great upon the public vitals. There ſeems little or no doubt but the claimants are inſurers; not the ultimate owners, at all events; and the affidavit of one of the claimants clearly ſhows how the bargains are made between the ſhipper here by commiſſion, and the conſignee in France, as to the riſque on the ſea, and on the land. How any man can ſwear (and *one only* has ventured to ſwear ſo, beſides the variations of his dates) "that the goods, if they had been landed in France, would have continued his property," is aſtoniſhing: for it is clear that if they were Engliſh property, and had arrived in France, they would have been condemned; if they were to be free, they muſt be French. So that the fact either way ſtares the affidavit in the face. And theſe are merchants! Not indeed true Engliſhmen; for better would it be for England, that Engliſhmen to French-

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men ſhould ſet foot to foot, than thus to protract a war with all the ſubtilities of mercantile negociation and every refinement. What is this but *caupónantes bellum? carrying on war by retail?* I own I am ſhocked when I ſee the names of the claimants, and obſerve by the affidavits how little *attention* is paid to truth, and to the bond of all duties, public and private, the ſolemnity of an oath. Is the faith of a broker, and his report to his principals, or even his oath at a Cuſtom-houſe, to heal over the conſcience of his employer? But theſe are merchants!

Remitters, agents by commiſſion, inſurers of all things certain and uncertain, and the greateſt enemies of this country and happy conſtitution, are found too often blended together in the general claſs of the denomination of merchants, aſſumed by men who are either born, or are dwelling, and growing rich under the laws, liberties, and protection of Great-Britain, without affection or attachment to it.

The true merchant, importer and exporter, for his own account and riſk, is a great character, and to be revered by all

mankind,

mankind, whoſe neceſſities are ſupplied by him, and the horrors even of war diminiſhed. Such there ſtill are, and who are men of the greateſt probity, and worthy of the confidence of Sovereigns, and of nations. I feel the utmoſt pain in this cauſe. I have a perſonal reſpect for ſome of the names I ſee in the claims and affidavits annexed, and am willing to be perſuaded, that in the immenſe hurry of other buſineſs, or by the diſſipation of the pleaſures of the times, they have been led into a moſt dangerous error, in imagining that affidavits are nothing but forms, to be left to be ſettled by an attorney, a proctor, a clerk in office, or a counting-houſe; they are made with levity, and ſworn to with raſhneſs. If ſuch affidavits had appeared in any other Court in this kingdom, the claimants would have been too ſenſible of the conſequences of falſifications. Warned of their miſtake and inattention here, they ought to be thankful for what is now ſaid, to put them upon their guard from ſhewing too much zeal for their correſpondents in an enemy's country hereafter. The goods muſt be condemned, and the freight and

coſts

coſts on all ſides paid by the claimants. No contract appears with the neutral carrier; they beſt know what it was, and for whom it was made. It is very reaſonable that the maſter ſhould pay the man.

The proctor for the claimants proteſted of a grievance and appealing; but the appeal has been ſince withdrawn.

Thurſday, January 21, 1779.

The KRONTA ANCHARET,

A SWEDISH ſhip, bound from Bourdeaux to Carliſchron in Sweden, taken by a private ſhip of war the Reſolution. Lading tobacco, ſugar, coffee, rice, prunes, wine, indigo, vinegar, almonds, oil, ſilk. Out of fifteen bills of lading one only expreſſed to be for the account and riſk of Swedes. The Court reſtored the ſhip and Maſter's adventure, with freight and all expences to be charged equally upon the cargo, upon an average; and condemned the tobacco, ſugar and coffee, which appeared to be the produce of the French colonies, and to have acquittances for the account of French ſubjects, and alſo the prunes, as French property; and directed the reſt of the property, not being verified by the Maſter's evidence and ſhip's papers, to be proved within a limited time.

Le THEODORE,

A French ſhip, bound from St. Domingo to Nantz. The ſhip was condemned,

demned, together with the general cargo, as French property, upon a former Court-day, reſerving the queſtion concerning the claims of two paſſengers on board the ſhip. Theſe claims were given by Iſrael Moſes, a Jew, who aſſerted himſelf to be a native of Prague in Bohemia, a ſubject of the Emperor of Germany; and Joſeph Molo, another Jew, who aſſerted himſelf to be a native of Milan, a ſubject of the Grand Duke of Tuſcany, for ſeveral ſums of money, jewels, trinkets, and cloaths, their property. Affidavits were annexed to their claims, tending to ſhew ill-behaviour in the owners of the privateer. After the Captain of the privateer had told them that they were at liberty to take their boxes and bags, the owners, and the brother of the Captain, inſiſted upon examining the contents, and did accordingly take each of them ſeparately into a room, after they were landed, and opened the drawers, ſtripped them naked, to ſee if they had any concealed jewels about them, and changed their cloaths, by giving them others out of the bag. But there was no charge of any other ill-treatment; and it ſeemed that the Captain,

tain of the privateer had no idea of the value which has ſince appeared, according to the deſcription of the particulars given in by the Jews, in their claims, to be very great. It appeared that the owners having, as it is moſt likely, got ſome information of the contents, uſed the following ſtratagem: they invited the Jews to dine with them at a public houſe, and after dinner ſome perſons in company deſired the Jews to ſhew them ſome artificial ſerpents, which they did; by which means a diſcovery was made.

It appeared, by their own affidavits, that Molo, two years before, went to St. Domingo to reſide as a merchant, and that Iſrael Moſes had been eighteen months there on the ſame account; nor did they ſet forth, that their wives and families were fixed in any part of Europe. And further it appeared, by the certificate of the French Governor, and regiſter on board the ſhip, that they were deſcribed as inhabitants of the French Cape. There was not the leaſt doubt of their identity. The Judge rejected the claims on this ground, that if ſuch claims were to be admitted, there would

would be no end of concealments, and of covering the property of enemies. That the colonies of the ſeveral maritime powers of Europe are full of renegadoes of all nations; that at a time when men run to and fro upon the earth, as in the language of the book, many perſons ſeem to be without any country; and therefore the nationality of a character of a perſon taken in war, is with more peculiar propriety determined by the locality in the age we live in. This was at all times the doctrine of the law of nations. An Engliſhman, reſident in the French colonies as a merchant, and going, as theſe Jews were, to a French port, and in a French ſhip, would have been equally liable to have his property on board condemned. Jews have as much right to public juſtice as other men, and in no country do they enjoy the benefits of the civil rights of humanity more amply than in Great-Britain; but they cannot expect to have a privilege greater than that which a Britiſh ſubject would be allowed to claim.

The principle of the law of nations is, that where the protection and power are, there is the ſubjection. If theſe perſons had

had abſolutely derelicted all inhabitancy in the colonies and territories of the King of France, and it had appeared that there was neither an intention, nor a poſſibility of their returning thither again, the analogy of the caſe of the exiled Americans might have been ſet up as better argument in their favour, although even that caſe would not be exactly parallel. That the ſuppoſed caſe, urged by the counſel for the claimants, of a French merchant on board a neutral ſhip coming from the Eaſt-Indies, with a bag of diamonds in his perſonal cuſtody, is by no means a good argument, no not even on board a Dutch ſhip. For even Dutch ſhips cannot protect the property of enemies beyond the limited line of commerce in Europe. Admit the principle of itinerant Jews being privileged to carry free what they may ſwear to be their property about their perſons, what will hinder but that a Jew ſhould tranſport in a pack at his back, a million in diamonds, the property of the enemy? If this were admitted, the whole trade of any maritime powers at war in America and the Eaſt-Indies might fall into

into the hands of Jews, and paſs ſafe through that channel.

The determination in the caſe of the WILLIAM and GRACE, by a late moſt reſpectable authority in this place, is freſh in memory. A Jew pretended to have gone from Holland to the rebel colonies to collect his debts, and to have inveſted them in the purchaſe of the ſhip and cargo, but the Court rejected the claim. The preſent claimants, at the time of their taking, were ſo far from having quitted the protection of the French government, that they were taken actually under its protection, being as much ſubject to the French laws, by being found on board a ſhip of France, and deſtined to a port in France, as if they had been taken priſoners of war in an attack made by Britiſh forces upon the place of their actual habitation at St. Domingo. On the other hand, the previous queſtion, of their having no right to enter a claim, ſtarted by the captors, on the ground of their being French inhabitants, and ſo not having by law a *perſona ſtandi in judicio*, was no juſt objection, becauſe it is one thing to admit a claim to be read and argued,

argued, and another thing to pronounce in favour of the right aſſerted. In a Court of Admiralty, Jews, Turks, Infidels, and Heretics, are to have juſtice. His moſt Chriſtian Majeſty has been heard already with all poſſible attention and reſpect, when the ſame objection was ſtarted and over-ruled. In regard to the conduct of the captors, there is not the leaſt charge of any cruelty inflicted upon the perſons of the claimants; they thought indeed that the laced and embroidered cloaths were rather unneceſſary, and gave them others, which all together muſt have been no very ſhabby collection, otherwiſe they would not have tranſported it ſo far. No pilfering has been charged or proved: one of the Jews ſays, that a pin, in which was a broken diamond, was given to the maid of the inn; but he does not ſay whether it was given by himſelf, or by the captors, or for what. It is the firſt time a broken diamond was ever heard of. A diamond cannot be broke, any more than it can be fuſed or melted. By this one may judge of the real value of the trinkets rated at ſo great an amount by the Jew in his affidavit, and what ſort of diamonds his box contained.

contained. So far from ill-uſing the Jews, they themſelves prove that the captors treated them handſomely, walked friendly with them about the town of Jerſey, and gave them a good dinner. If any torture or cruelty, or any violent act upon their perſons had been charged and proved, this Court would have redreſſed the injury. The conſequence to the captors would have been the forfeiture of their commiſſion and ſecurity, and the reſtitution of the goods claimed; but nothing of that kind appears, either from the affidavit of the parties themſelves, or from any evidence of the French Captain, officers, crew, or any of the paſſengers. One alone, Monſ. Porteau, ſays, that, in company with one of the Jews, he looked in at a window, and ſaw them ſearching the other Jew; and that they threatened them, and bid them keep at a diſtance till the ſearch was over: he alſo ſwore, that they had paid the French Captain for their paſſage, and that the Captain had given them a receipt; therefore, as it is natural to ſuppoſe that the receipt muſt have been for the paſſage of their goods, if they had any thing conſiderable, as well

as for their perſons, the claimants not producing ſuch receipt, it has raiſed a very high preſumption that the jewels and fine clothes in reality belonged to other French perſons on board, eſpecially as there was a lady, with her children and ſervants, and ſeveral military officers in the ſhip. It alſo ſeems very abſurd to ſay that ſuch clothes and ornaments, jewels and trinkets, were going, *in the way of trade*, to France; becauſe it is as unnatural to bring from the French American colonies, bijoux, &c. to Europe, particularly to France back again, as it would be to carry logs to the wood. There is little doubt, therefore, upon the whole, that theſe ſort of things belonged to ſome French family or perſons; but whether they did or did not, and were the property of the Jew claimants, who were to be conſidered as Frenchmen, *pro hac vice*, the goods claimed muſt be condemned. The Court could not help calling to mind the hard caſe of Admiral Young, then a Captain in a former war, when, after a cargo had been condemned on board an Italian ſhip, and the value diſtributed by Captain Young among his officers and ſeamen, an

appeal

appeal to the King and Council being entered on the part of Turkiſh ſubjects, as they called themſelves, and repreſentations made by the Ottoman Porte, threatening to ſeize the goods of the Engliſh Turky company, the ſentence of condemnation of the Court of Admiralty was reverſed, and Captain Young obliged to refund the value to a very great amount, and all the expences, out of his own property; all which has ſince been diſcovered to have been an impoſition upon the Britiſh Government at that time, and that the real owners were French merchants, well known at Leghorn, and the manoeuvre ſet on foot at Conſtantinople by the intrigues of the French Ambaſſador.

CONCORDIA SOPHIA,

A Hamburgher ſhip, from Hamburgh to Bourdeaux, laden with copper ſheets and other goods. Court reſtored the ſhip to the Hamburghers the owners, with freight and all expences charged on the cargo. The copper ſheets fit for ſheathing, to be ſold to his Majeſty, on a fair valuation, for the benefit of thoſe who ſhould

appear to have a right; and directed that the claimants of the cargo, not being verified by the evidence of the Maſter and ſhip's papers, ſhould enter into farther proof of their property.

Saturday,

Saturday, January 23, 1779.

The JUFFROW GERARDA,

A DUTCH ſhip, bound from Rotterdam to Havre de Grace, cargo tobacco, bundles of iron, lead, and bale goods, taken by the private ſhip of war the Joſeph. The captor attempted to prove, in mitigation of coſts and damages, that the Maſter refuſed to produce his paſſport. The Court obſerved, that although neutral Maſters are very apt to be guilty of obſtinacy and abſurdity, to the prejudice of their owners, yet in this caſe Stoffels, the Maſter, was not in fault, for he had depoſed upon oath, that he had produced all his ſhip's papers to the prize-maſter, who took only the bills of lading, and returned the reſt. It appeared that the ſhip was taken on the 10th of September, 1778; and that the captor never produced the Maſter to be examined by the Commiſſioners till the 25th of November; and he ſwore that he offered his papers, not before delivered up, to the privateer's people, at the houſe in Dover where they were; that they would

would not take any of them; the delay therefore appeared clearly from the date of the monition and examinations to have been occaſioned by the captors. It is as much the duty and intereſt of every party who ſtops a neutral ſhip, to demand a ſight of a paſſport, as it is the duty and intereſt of a neutral to produce it whenſoever and whereſoever duly required. A party commiſſioned, and cruizing againſt an enemy, is like a centinel; he has a right, and ought to put the queſtion, *Qui va la?* or, "Who goes there?" The party who does not properly anſwer to a centinel, may juſtly be ſtopped, detained at the guard-houſe, or carried to head-quarters. The conduct of the Dutch Captain appearing perfectly fair, the Judge reſtored the ſhip and cargo, and condemned the captor in full coſts and damages.

The DRIE GEBROEDERS,

Bound from Hamburgh to Rouen in France, taken by the private ſhip of war the Two Brothers, laden with pitch, tar, lead, wool, feathers, copper, and other merchandize. Among the ſhip's papers were

were only two bills of lading, which mentioned for whoſe account and riſque the goods were; theſe were bales of wool for the account and riſque of Mr. Grettel, and there was a certificate of the magiſtrates of Hamburgh *found on board*, that Grettel had made an atteſtation, in a due manner, before them, of their being his property; but the atteſtation itſelf was not on board; the Maſter did not verify upon oath the property of any of the goods on board, and only referred to the bills of lading. The Court therefore decreed, that the ſhip ſhould be reſtored, with freight and expences, to the Maſter, as claimed by him, for himſelf as part owner, and for others inhabitants of Hamburgh, and of Altena in Denmark; directed the pitch and tar, and copper fit for ſheathing, to be ſold to his Majeſty's Commiſſioners of the Navy, for the uſe of thoſe who ſhould be intitled: directed further proof to be made of the property of the ſeveral goods not yet reſtored, chargeable with the freight and expences on all ſides for defect of verification.

The JONGE JUFFERS, *Reetſma,*

A Dutch ſhip, decreed to be reſtored upon the 23d of November laſt, whenſoever a legal claim ſhould be given for the ſame; and that the cargo, conſiſting of naval ſtores, ſhould be ſold to the Commiſſioners of his Majeſty's Navy, they undertaking to pay the true value thereof, and all incidental charges, to the parties who ſhould appear to have right. A claim being now given in, the ſhip was reſtored, and the decree affirmed accordingly. The Court obſerving upon the indulgence of the Britiſh Government towards the Dutch ſubjects, notwithſtanding the delay and long dereliction on their part, by which the demurrage was conſiderably encreaſed, and would be accordingly conſidered; for that by incidental expences muſt be underſtood all reaſonable expences incurred, and would make a part of the award of the valuation and charges to be allowed, by merchants named on each ſide.

Thurſday,

Thurſday, January 28, 1779.

JUNGFRE MARIA,

A DANISH ſhip, bound from Barcelona in Spain to Honfleur in France, with a cargo of brandy and allum, taken by the private ſhip of war the Waſp, upon the 27th of October. The Maſter claimed the ſhip as Daniſh property, and the cargo as free on board a Daniſh ſhip. Several claims were given by Mr. Zinck, the Daniſh Vice-Conſul at Liverpool, for the cargo, as the property of Manuel Cardenas, Narciſſo Bas, Valentine Reira and Co. Gaffet Morera and Co. of Barcelona, ſubjects of the King of Spain. This ſhip was a general carrier ſhip, upon freight. The Maſter, Chriſtian Degan, being queſtioned upon the uſual interrogatory concerning the property of the cargo, referred to his bills of lading; but declared that he believed that the perſons at Honfleur, (the French conſignees) who were to receive the cargo, were the real and true owners of the ſeveral parcels of the cargo conſigned to them, but could not ſay who in particu-

lar of them were to run the riſque; and gave for a reaſon of his belief, that the French conſignees were to pay him his freight. Axtel, the ſhip's carpenter, declared his belief that the brandy was ſold by the Spaniards for the riſque of the French at Honfleur. Another of the Daniſh ſeamen ſwore, that he *believed*, but could not poſitively ſwear, that the cargo was French property. By two charter-parties on board it appeared, that the French were freighters, and were reſponſible to the Maſter for the freight. The ſhip had no Daniſh paſs, as required by treaty, but only a Mediterranean paſs, and there were twenty-five bills of lading, not one of them expreſſing upon whoſe *account* and *riſque* the cargo was laden. The ſhip was taken the 3d of September, 1778, and the witneſſes were examined the 16th and 17th of September following. After the evidence was publiſhed, Zinck, who had already given in two claims with affidavits annexed, now appeared again; and ſo late as the 9th of December, that is near three months after the examinations were known, gave in a third claim, and accompanied it with an affidavit

affidavit containing very new and extraordinary matter, ſetting forth that he was preſent at the examination of the Maſter, Degan, before the Commiſſioners of the Judge at Liverpool; that he thought it was on the 16th of September; and that Degan, inſtead of ſaying as it was taken down in his depoſition as above recited, had anſwered that he did not know whether the property of the cargo was French or Spaniſh; that he, Zinck, interfered, and expreſſed his wonder to the Commiſſioners that they would teaze the man with ſo many queſtions of what the man knew nothing about. On which the Commiſſioners ordered Zinck to withdraw.

In anſwer to this affidavit of Zinck, the Commiſſioners returned affidavits to the Court, ſetting forth that Zinck was not preſent on the 16th, when Degan was examined to that part of his depoſition which Zinck objected to; but was preſent on the 17th, when he was examined to other parts; and that Zinck was ſo far from objecting then, that Degan, being ſcrupulous about ſigning his depoſition, he did not do it till Kenyon, one of the own-

ers of the privateer, brought Zinck into the room to inform Degan, that it was proper he ſhould ſign his own depoſition, and then he ſigned it, Zinck ſaying that he would ſign it himſelf. Mr. Eggers, a Dane, and ſworn Interpreter, declared in his affidavit that he put all the queſtions to Degan in the Daniſh language; that he heard Zinck talk with the Daniſh Captain, Degan, in Daniſh, during the time of part of his examination, and told him that he was to ſign nothing but in his preſence, and intimidated the witneſs by bidding him take care leſt he ſhould get himſelf into a ſcrape. Eggers informed the Commiſſioners of this converſation, and they rebuked Zinck for his improper behaviour. Two affidavits, dated the 23d of January, were offered, made by the Daniſh Captain, Degan, and his brother, to falſify their own depoſitions. The captors brought in an affidavit of M. Frederic Axholm, an officer of the Daniſh navy, who was learning navigation on board this ſhip, who was at Barcelona at the time of her lading there, and in her at the time of her being taken; he ſwore that in converſation with the Spaniards, (the laders) they

they directed the Maſter to avoid the Engliſh cruizers. Another affidavit was alſo offered by the captors, made by Kenyon, one of the owners of the privateer, confirming the fact alledged in the affidavit of the Commiſſioners, that Zinck was fetched by him into the room; and that Zinck peruſed the depoſition of Degan, &c.

The Judge decreed, that the ſhip, being clearly Daniſh property, ſhould be reſtored to the Maſter with freight, and his expences; and, with reſpect to the reſt, obſerved, that all ſides were wrong; that the affidavit of Axholm was inadmiſſible; for if the captors meant to have had any advantage from his evidence, they ſhould have produced him regularly at the firſt, to be examined on the uſual ſtanding interrogatories, at the ſame time with the Daniſh Captain and the reſt; that Kenyon's evidence alſo, as an owner of the privateer, was inadmiſſible; and the Commiſſioners were very highly to be cenſured for taking the affidavit of Axholm, in a manner contrary to the rules of the Court, and the King's inſtructions; that the evidence of the Notary Public, and of Eggers the

ſworn

ſworn Daniſh Interpreter, and the report of the Commiſſioners, upon oath, againſt whom there was not the leaſt impeachment of probity, weighed down all Zinck had affirmed on oath. The character of Conſuls is moſt reſpectable; they are public perſons, and a ſort of Miniſters ſent by one nation, approved and accepted by another, but without the privileges attached to Miniſters with credentials: they have a kind of judicial authority among the merchants, and maſters and crews of veſſels of their own nation, ſubmitting themſelves to them by conſent, or by the commercial laws of their own country, in mercantile matters of diſpute and regulations; and they have what is called their Chancery, that is an office of regiſtery and record, and their certificates are authentic in *foro domeſtico*. But Mr. Zinck has evidently deſcended from the reſpectability of his character as Vice-Conſul, if he is one. It appears clearly that he prompted and intimidated a witneſs, and interfered in a very improper manner, before Commiſſioners who repreſent this Court. His zeal and ſedulity however obtained him afterwards the agency in all the claims; but it was only

only till the laſt claim that he found it neceſſary to make the affidavit to falſify the Maſter's depoſition. Conſuls are not very eaſily admitted by Government, and are men often objectionable and diſagreeable to the reſident Miniſters of their own country here, whom they frequently interfere with, and as often embarraſs. Vice-Conſuls are ſtill leſs acceptable. Mr. Zinck's authority as Vice-Conſul, admitted and confirmed by this Government, does not appear; he is not the only Vice-Conſul in the out-ports who has embroiled matters. *Agencies* are very fine things; but it muſt be obſerved, that there is a Conſul, agent in cauſes of a neighbouring kingdom to Denmark, whoſe attention, prudence, and moderation, do him the higheſt credit. In this matter the Court will look chiefly into the report of its own Commiſſioners. No objection whatſoever is taken by Zinck to the evidence of the Daniſh carpenter Axtel, nor to Eggers, to affect his knowledge of the language, or his character; or that any undue influence was uſed to him, or the Notary, or Commiſſioners. The Commiſſioners admit, that the Daniſh Captain did not ſwear poſitively to the property being French, and the *foundation*

dation of the Maſter's *opinion* appears from his depoſition, that he believed the cargo to be French property, becauſe the French conſignees were to pay him his freight. Now the Maſter's opinion is not his knowledge; and he might reaſon wrong, and draw falſe conſequences and concluſions from true premiſſes. It is natural enough for a Maſter of a common carrier ſhip to reaſon no farther than the queſtion, "Who is to pay *me*? The laſt man you ſee and have to do with, is the anſwer. The laders you may never ſee any more, (and to them you do not recur,) but where you deliver the goods, there the receivers ſhall pay; but upon whoſe real account they ſhall pay, is not clear to you, nor is it any matter to you. The Maſter's deduction therefore is not certain; but a plain honeſt man might eaſily make it. The reaſon given in the depoſition, and the report of the Commiſſioners, reduce the depoſition of the Maſter to this, that he does not abſolutely know, and that he cannot verify the property one way or other farther than his judgment goes. The ſubſequent affidavit of the Maſter, and of his brother, to falſify their

their written evidence, which was read over to them, and explained by a ſworn Daniſh Interpreter, is inadmiſſible. When the Maſter gave in his claim, under the notion of Daniſh ſhips being privileged carriers, he depoſed rather boldly to French property; but after the event of a judgment in ſeveral caſes againſt the privilege, he and the Daniſh Agent took the alarm. The Daniſh officer's affidavit, if it had been admiſſible, amounts to nothing but hear-ſay, that the Spaniards at Barcelona adviſed the Maſter to keep clear of the Engliſh cruizers. This was but hear-ſay; the talkers might be Spaniards, concerned or not concerned in the lading or cargo, or mere converſation of any body; and it was natural, when a war was expected. The cruizers of all maritime nations in hoſtility are to be avoided by a prudent Maſter of a neutral common carrier ſhip. Beſides all this, the cargo for which the bills of lading are defective, was put on board ſo early as the 11th of July; the ſhip ſailed from Barcelona on the 23d, and on the 4th of Auguſt ſhe touched at Gibraltar; ſo the laders could have no knowledge or ſuſpicion of hoſtilities de-

clared by either France or England. For theſe reaſons the Spaniſh claimants are to be indulged with a permiſſion to go into farther proof of their property. The ſeizure is juſtified under the defective bills of lading, and the Spaniſh property not being verified, but doubted by the Maſter, and the reſt of the witneſſes on board the ſhip. The neutral however muſt be taken care of; and therefore that he may have a ſure fund to rely upon, his freight and expences muſt be a charge on the whole cargo in this, as in other like caſes, when there are defective bills of lading and documents, and the Maſter cannot or will not ſwear to the property being neutral, at the time of lading, taking, or delivery. It is to be wiſhed, that this charging expences on the cargo ſhould be well underſtood by the neutral agents preſent, for it is frequently miſtaken, and the ſpirit of perplexity, whether *wilful* or *natural*, is greater among us all than the ſpirit of perſpicuity.

By the law and practice of this Court of Admiralty, which in theſe caſes, even in the ſevereſt times, has been always infinitely more gentle than the arbitrary ſeverities of the

the French Courts in the like caſes, for which we need only look into their *Reglemens*, inſtead of condemning neutral ſhips inſtantly, when the bills of lading or of ſale, paſſes, or other documents of ſhips and cargoes, are either wanting or defective in their contents, the Court has pronounced juſt cauſe of ſeizure, in favour of the conduct of the captor; and becauſe the claimant himſelf has not put on board due titles or documents, he has raiſed a violent ſuſpicion and preſumption of enemy's property by his own default, and therefore the permitting him to go into farther proof, and to produce better and *ſufficient* titles, is a very great lenity and indulgence; *an increaſe of delay and expence all originating from his own act, for which he is anſwerable.* In the laſt war, the Maſter was the general claimant for himſelf and every body concerned; and in caſes of farther proof being decreed of the cargo, he uſed to be condemned in the expences, and ſo he was left to recover them again of the freighters when he got home. They and the inſurers were commonly too hard for the Maſter, and if their goods were condemned at laſt,

they flung ſome blame upon his conduct, eſpecially if he had made an honeſt depoſition to their prejudice; ſo that the poor neutral carrier, the fund being out of his reach, got nothing but a right to go to law in vain with different inhabitants of half the world, to recover his freight and charges. The French owners in particular of cargoes never repaid the Dutch carriers, who almoſt all of them in the laſt war fell under this unfortunate predicament of juſt cauſe of ſeizure and expences; and hence aroſe the cries of miſery of the Dutch and all other the neutral carriers, on account of this Court, which complaints were in fact to be charged to the perfidy of the French, who freighted them. In order therefore to preſerve the intereſts of the honeſt neutral carriers, and to guard them againſt prevarications of friends and foes, as much as poſſible, it is moſt adviſeable and equitable, when neutral ſhips are reſtored, to charge the freight and expences of the Maſter upon the cargo, by which is meant an average charge; ſo that let the laſt event of the cauſe be what it may, he is certain of a ſolid fund. If the whole or part of the

cargo

cargo ſhall be condemned, the captor will pay his ſhare of the freight and expences due to the Maſter: if the whole or part ſhall be reſtored, the claimant will then pay his ſhare; and if any burthen is flung any where, in caſe the whole ſhould be reſtored, the captor will ſtill pay his own expences. This is an unuſual lenity to claimants; for in former wars, whenever there was juſt cauſe of ſeizure, the captors expences were all to be paid by the prover. As it is now ſettled, it is hoped, beyond the poſſibility of the meaning of the Court being miſtaken, but by thoſe who chuſe to miſunderſtand it, the neutral gets immediately his ſhip diſcharged; he goes away in good humour, and we ſtand a chance of ſeeing him here again. The Dutch Eaſt Frieſlanders, the Swedes, Danes, and Hanſe Townſmen, are the great carriers of Europe: the former have furniſhed us with the greateſt part of our tranſports to America. The carrier maſters are moſt of them good plain honeſt men. When the ſcale hangs equal in judgment between them and an Engliſhman, it is the duty and it is the diſpoſition of this Court to turn it in favor

of

of the neutrals, ſo long as they do not prevaricate or conceal. Let the French courts proceed as they may; we may appeal to the *Reglemens* publiſhed by the French government in the two laſt wars, and in the preſent hoſtilities, announced arbitrarily to all Europe, for the difference of treatment. We will take care of the honeſt neutral, who ſhall never ſuffer while this Court can help him.

Tueſday,

Tueſday, February 2, 1779.

HEARD thirty-four cauſes of naval ſtore ſhips, chiefly Dutch. The neutral ſtore ſhips were all reſtored with freight, and all reaſonable expences of the claimant and captor, and the ſtores were decreed to be ſold upon a fair valuation, by merchants to be named on each ſide, for the uſe of his Majeſty's navy, to be paid to the neutral claimants.

The queſtion upon the property was reſerved for farther conſideration, in two or three caſes, in which Britiſh ſubjects were the laders, or the King of France the declared owner; or where the ſhip timber was fabricated into knees, bowſprits, &c. and in thoſe caſes the ſhips were releaſed in like manner, all freight and expences to be charged to the buyers, and the money to be brought into Court for the benefit of all parties who ſhould be proved to have right.

The Judge ſpoke with much ſeverity on the part taken by Britiſh merchants in aiding the enemies of their country; that no naturalization in a foreign ſtate can abſolve

abſolve them of their allegiance, whenever their perſons or their properties ſhall come within the vortex or reach of the power of Britiſh laws. That the Dutch have no privilege to carry the property of Engliſhmen to the enemies of England. The Proctors for ſome of the neutrals entered proteſts againſt the decree of ſale; but the Judge obſerved, that no perſons could be at the bottom of theſe proteſts except real French owners, or rather the French government; for neither inſurers, maſters, nor owners, could be ſufferers, nor indeed ordinary Frenchmen. He added, that there was a peculiar abſurdity in neutrals appealing to his Majeſty in Council againſt a decree of ſale exactly ſquaring with his Majeſty's own declaration, formed and ſettled in Council, and notified to the Dutch States, and all the reſt of the neutral maritime powers. He warned them, as a friend to honeſt neutrals, not to incur a fruitleſs expence, to beware of factious and raſh advice, and to take the opinions of their own Advocates in every ſtep.

Monday,

Monday, February 8, 1779.

CONCORDIA AFFINITATIS,

THIS was a Swediſh ſhip, bound from Hamburgh to Rochelle. Upon the 27th of November laſt the ſhip was reſtored with freight and the Maſter's expences charged upon the cargo. The hemp and copper ſheets were ordered to be ſold to the Commiſſioners of his Majeſty's Navy, the money to be brought into the Regiſtry, for the uſe of thoſe who ſhall be intitled thereto; and the claimants of the cargo in general (the property not being verified by the Maſter, or fully ſet forth in the bills of lading) were ordered to prove their property. The captors conſented to accept of affidavits as proof, without going into pleadings. A great number of affidavits were accordingly brought in. Out of fourteen there were but three numbers which were un-equivocal and direct. The Court reſtored the contents of theſe three bills of lading, and ordered, that the claimants ſhould give fuller proof of the property of all the reſt.

The objections taken by the counſel for the captors were, that many of the affidavits were only in the preſent tenſe, viz. that the goods claimed *are* ſolely and wholly the property of claimants, and that no other perſon *hath* any ſhare or intereſt therein: whereas it ought to have been ſworn, not only that the goods were their entire and ſole property at the time of the lading, at the time of their being taken as prize, and are ſo at the preſent time, but alſo *will remain* ſo in caſe the ſhip ſhall arrive at the place of her original deſtination. One of the claimants ſwore, that the hemp *does go over the ſea* for his account and riſque. Another ſwore, that the goods are inſured at Hamburgh and Amſterdam, and *thus* (drawing an inference) ſubjects of neutral ſtates actually run the riſque thereof. The caſe of the Charles Havernerſwerth, in 1748, was quoted. That was a Swediſh ſhip, which had taken in goods upon general freight at Hambro' for Alicant, Cadiz, and Marſeilles, by the bills of lading, to be delivered to the perſons to whom the goods were conſigned. There were atteſtations on board the ſhip concerning the property, and to them excep-

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tions were taken as in the preſent, that they related to the property at the time of ſhipping only. The Court ordered fuller proof; and the mode of making it to be ſettled and agreed by the Advocates on all ſides by reference; Dr. Paul, the King's Advocate. Sir George Lee, Sir Ed. Simpſon, Dr. Pinfold, Sir George Hay, Dr. Jenner, and the reſt of the bar of Civilians. They upon reference reported, that affidavits ſhould be made by the claimants that the goods were their ſole and entire property at the time of their ſhipping, continued to be ſo at the time of the capture, and would continue ſo until the goods ſhould be ſold by their agents in France and Spain for their account. This form was exactly correſponding to the latter part of the 12th of the ſtanding interrogatories. It was urged, that affidavits being now made and inſufficient, the Court ſhould condemn. The Judge obſerved, that the affidavits were all made, and bore date in November previous to his decree on the 27th; that although it was true that a line muſt be drawn in every cauſe after a certain period to exclude all further proof, otherwiſe cauſes would be immortal, yet he would allow farther time to the claimants to

make affidavits in proper form; as they made theſe before they knew what forms were required of them; that it would be very dangerous to admit ſuch general affidavits; and that it was a very ſuſpicious circumſtance, that the ſame notary who had drawn the affidavits for the goods in the bills of lading, C. G. N. which *were ſufficiently full*, (and ſo it was clear, therefore, from them, that he knew the forms that were proper) was the drawer of the eleven affidavits, one of which only ſpoke to the property of the goods while going over the ſea, thereby raiſing an implication, that they were the enemy's when they ſhould arrive at land; or arguing, that by the inſurers being neutrals they were therefore for neutral riſque. This ſhews the propriety of the words account and riſque, and the wiſdom of the 12th interrogatory; for goods may, eſpecially ſince policies of inſurance have become general, be for one man's account that are not for his riſque, or for a man's riſque which are not for his account. The very idea of compleat and perfect property is perpetuity; that what was mine yeſterday is mine to-day, and will

will be ſo to-morrow, and every day until I aſſign it over, or make delivery of it for ſome due conſideration to another perſon. The word *proprius*, in the claſſics, means perpetual; thus in Terence, " *ut hæc mihi propria ſit felicitas:*" may this happineſs continue mine; that is, long and laſting. It was not until the caſe of the Charles Havernerſwerth, that affidavits were ever admitted by the practice of the Admiralty Court, but as *ſemiplena probatio* only; and then they were admitted as ſufficient by conſent.

The claimants uſed to go into farther pleadings and proofs, and the captors had liberty to plead in contradiction, and to have croſs-examinations. The ſame diſtreſs and difficulty dwelt on the mind of the Judge then as it does now. The going into pleadings and proofs is one of the moſt difficult points of adjudication in cauſes of prize. He felt the great inconvenience, expence and delay of this proceeding; but it is eaſier often to ſee an evil in the practice of a Court, than to find a remedy that has no objection, or may not lead to worſe conſequences. With reſpect to great names, that

that have done honour to their profeſſion, it muſt be obſerved, that it would be dangerous to point out too exactly and invariably the forms of affidavits. Invariable forms are advantageous inſtruments for fraud to make uſe of. It will be ſufficient to ſay, that wherever farther proof is indulged to claimants upon affidavits, thoſe atteſtations muſt be without equivocality, and they muſt go to the property of goods at the periods when firſt laden, when taken, and when finally landed; and they ought to be negative as well as affirmative, that no enemies of the Crown of Great-Britain, or its ſubjects trading with its enemies, had, have, or will have, at any of thoſe times, any right, ſhare, title, or intereſt therein, directly or indirectly, without fraud, colluſion, equivocation, or mental reſervation. The claimants on the whole are recommended to conſider well what they can truly ſwear to, and adviſe with their advocates as to the forms of their affidavits and proofs.

Friday,

Friday, February 19, 1779.

La PROSPERITÉ, *or the* WELFAREN.

LEVIEN Gotthard Mathieſen, Maſter. This ſhip was a ſhip upon freight, chartered by a French broker for the laders reſident at Nantz, taken on her voyage from Nantz to Dunkirk by the private ſhip of war the Tyger, the 25th of Auguſt laſt. The ſhip was originally claimed by the Maſter, the property of himſelf and other inhabitants of the free imperial city of Lubeck, and the cargo in a general way on behalf of the ſeveral perſons who *may appear* to be intereſted therein. The cargo conſiſted of brandy, linen, coffee, and cotton-wool, and ten bales of ſilk *Eaſt-India* handkerchiefs.

On the 30th of October a claim was given in for Martinus Tak, a Dutch ſubject, for ten bales of Chollet handkerchiefs; but the Maſter declared, in his depoſition, that he did *not know* the laders, owners, or conſignees; that he ſhould have landed the whole of his cargo at Dunkirk had he arrived there ſafe, which is all he knew of

the

the property. All the bills of lading were defective in not expreſſing upon whoſe account and riſque the ſeveral parts of the cargo were ſhipped; and ſeveral referred to acquittances under bond, of which the Captain was therein declared to be the bearer. November 27, the Court reſtored the ſhip as the property of Lubeckers, with freight and expences of the Maſter, to be charged upon the cargo; and decreed farther proof of property to be made by all parties who might have intereſt. No other claims being given in, the cauſe came on to be heard upon farther proof of property, by affidavits, with conſent of parties.

In regard to Martinus Tak, a certificate was offered, made by the magiſtrates of Middleburgh, of Zealand in Holland, dated December 17, 1778, ſetting forth that Tak, being of the Menonite perſuaſion of religion, (a ſort of Quakers) had ſolemnly affirmed before them, that the Chollet handkerchiefs were his own goods at the time they were laden, and continue to be his true property to this preſent time, and *ſo* they were belonging to him in full property at the time the ſhip was taken as prize,

prize, and *will be*, at the *time* of their arrival *here at Middleburgh*; that they were the ſame as in the bills of lading; and that the King of France, his vaſſals or ſubjects, or inhabitants of that country, territories or dominions, never had, neither have they at this preſent time, any ſhare or property; but not a word was ſaid as to the Americans or Britiſh ſubjects not being intereſted.

The equivocality of this declaration of the Menonite Dutchman was obvious on the face of it; for he ſinks all declaration as to whoſe property the handkerchiefs would have been, in caſe they had arrived at *Dunkirk*, the real place of their deſtination, from whence it is moſt likely they were meant to have been run into England; and againſt this declaration ſtood the bill of lading, N° 46, which indeed mentions the handkerchiefs as going for the account of Tak, (but names not riſk) with an acquittance under bond for duties, of which the Captain is there ſaid to be the bearer. Now it was clear, that neither the Captain produced the acquittances, nor did Tak offer them in proof; and therefore the

Court obſerved, that here was plainly a fraudulent ſubduction of documents proved by the bills of lading to have been in the Maſter's poſſeſſion; that if the acquittances had been produced by either him or Tak, which were granted under bond to perform all that was required by the laws of France, they would have ſhewn whether Frenchmen or Dutchmen were the reſponſible men, and the real proprietors, from the beginning to the end of the voyage. On the part of Meſſ. Dutihl, of Rotterdam, no better proof was offered than their agent's, Mr. Amſink's affidavit annexed originally to his claim, with ſome letters, and duplicates of the bills of lading, which he ſwore were tranſmitted to him by his parties; and he believed (in the uſual ſtile of affidavits annexed to all claims) that the claim was true, and that his parties would be able to make due ſpecification. Theſe letters and duplicates of the defective bill of lading already before the Court, mention account, but not riſk of Dutihl, therefore, not being accompanied with any proofs of their authenticity upon oath, and being beſides very equivocal in their contents,

tents, are rejected by the Court; the claimants having had time enough, ſince the 27th of November laſt, to have made fuller and ſufficient proof.

The coffee for which Devet has offered proof, by affidavit made before the Magiſtrates of Oſtend, expreſſes that it was deſtined for Oſtend, whereas by the Maſter's depoſition the whole cargo was deſtined for Dunkirk; and the affidavit is a farther averment againſt the bills of lading, by which it appears that the coffee was acquitted and bonded under the duties, although the acquittances are not produced. Now in the Wynberg and other ſhips it was in proof, that all the French coffee is by the laws of France re-exported, a drawback on the duties allowed to the French re-exporter greater than to any foreigner, and the re-exporter gives bond to deliver the ſame at the place of deſtination, otherwiſe for default of the certificate returned authenticated by the French Conſul or Magiſtrates, to pay the King of France the value.

In regard to the proof of Rocca and Battle, ſaid to be Spaniſh ſubjects, it amounted to no more than a notarial certificate of a

Notary at Barcelona, that they had ſhewn him an invoice book, in which was an invoice of ten pipes of brandy, ſhipped in *that* port upon a *Dutch* ſhip called the Union, Captain Jacob Boon, for Nantz, conſigned to Meſſ. Th. Welfecherin and Co. to ſell for their account; and in caſe they could not ſell them at Nantz, to let them go to Dunkirk, which they did, as appeared (and ſo it was *alledged* by the parties making this declaration) by the account of charges, dated the 14th of October, ſent by Welfecherin to the declarers, having ſhipped them (as is alſo alledged) on board the Proſperity, Captain Mathieſen of Lubec, to the conſignment of Tranion Devin of Dunkirk. He is called Tranz De Vink in the bill of lading, N° 48. To this proof objection was taken, that it was only an inſtrument of a Notary reciting allegations of parties intereſted, but it did not ſhew that their declaration was upon oath. But on conſideration that this declaration and notarial inſtrument was made on the 6th of September, long before the cauſe was firſt heard on the 27th of November following,

and

and previous to the order made for farther proof, the Court directed that Rocca and Battle ſhould now make farther and fuller proof upon oath of their property. And in regard to all the reſt of the cargo, the cotton and coffee, for which no claims were made, but acquittances under bond appeared to have been given by the French laders, and the handkerchiefs, for which it appeared that acquittances had been given, and that the Captain was the bearer, but that they had been ſubducted, they were to be condemned; alſo the brandy, for which there was not ſufficient proof made by Dutihl. The Court obſerved that the whole cargo carried with it the appearance of a ſmuggling tranſaction. If parties equivocate, or do not make oath in their own perſon, or produce thoſe material documents which clearly did exiſt on board, or muſt be now in their hands, it is unneceſſary to inquire what the nature of thoſe acquittances was; for it muſt be preſumed that they were made out for the enemy and his property: otherwiſe why conceal or ſubduct them? No affidavits of property can aver againſt a poſitive

poſitive proof of ſubduction of titles on board the ſhip, and which were in cuſtody of the Maſter, eſpecially ſuch titles being public inſtruments.

RÈGLEMENT

RÈGLEMENT *de la Cour de France, en date du 26 Juillet, concernant la navigation des bâtimens neutres en tems de guerre.*

LE Roi s'étant fait repréſenter *les anciens règlemens* concernant la navigation des vaiſſeaux neutres pendant la guerre, Sa Maj. a jugé à *propos d'en renouveller* les diſpoſitions, & d'y ajouter celles qui lui ont paru les plus capables des conſerver les droits des puiſſances neutres, & les intérêts de leurs ſujets, ſans néanmoins autoriſer l'abus, que l'on pourroit faire de leur pavillon: et en conſequence Sa Maj. a ordonné & ordonne ce qui ſuit.

ARTICLE I.

Fait defenſes S. M. à tous armateurs d'arrêter & de conduire dans les ports du royaume les navires des puiſſances neutres, quand même ils ſortiroient des ports ennemis, ou qu'ils y ſeroient deſtinés; à l'exception toutefois de ceux, qui porteroient des ſecours à des places bloquées, inveſties ou aſſiégées. A l'égard des navires des etats neutres, qui ſeroient chargés de marchandiſes de contrebande deſtinées à l'ennemi,

l'ennemi, ils pourront être arrêtés, & les dites marchandiſes ſeront ſaiſies & confiſquées ; mais les batimens & le ſurplus de leur cargaiſon ſeront relâchés, à moins que les dites marchandiſes de contrebande ne compoſent *les trois quarts* de la valeur du chargement ; *auquel cas les navires & la cargaiſon ſeront confiſqués en entier* ; ſe réſervant au ſurplus Sa Maj. de révoquer la liberté portée au préſent article, ſi les puiſſances ennemies n'accordent pas le réciproque dans le délai de ſix mois, à compter du jour de la publication du préſent règlement.

II.

Les maîtres des bâtimens neutres ſeront tenus de juſtifier ſur mer de leur propriété neutre par les paſſeports, connoiſſemens, factures, & autres pièces de bord ; l'une deſquelles au moins conſtatera la propriété neutre, ou en contiendra une énonciation préciſe : et, quant aux chartres-parties & autres pièces, qui ne ſeroient pas ſignées, veut S. M. qu'elles ſoient regardées comme nulles & de nul effet.

III. Tous

III.

Tous vaiſſeaux pris, de quelque nation qu'ils ſoient, neutres ou alliées, deſquels il ſera conſtaté, *qu'il y a eu des papiers jettés à la mer*, ou autrement *ſupprimés* ou *diſtraits*, *ſeront déclarés de bonne priſe avec leurs cargaiſons*, *ſur la ſeule preuve* des papiers jettés à la mer, & ſans qu'il ſoit beſoin d'examiner, quels étoient ces papiers, par qui ils ont été jettés, & *s'il en eſt reſté ſuffiſamment à bord pour juſtifier*, que le navire & ſon chargement appartiennent à des amis ou alliés.

IV.

Un paſſeport ou congé ne pourra ſervir que pour *un ſeul* voyage, & ſera réputé *nul*, s'il eſt prouvé, que le bâtiment, pour lequel il auroit été expédié, n'étoit, au moment de l'expédition, dans aucun des ports du prince, qui l'a accordé.

V.

On n'aura aucun égard aux paſſeports des puiſſances neutres, lorſque ceux qui les auront obtenus ſe trouveront y avoir contrevenu, ou lorſque les paſſeports exprimeront

meront un nom de bâtiment différent de l'énonciation, qui en ſera faite dans les autres pièces de bord, à moins que les preuves du changement de nom avec l'identité du bâtiment ne faſſent partie de ces mêmes pièces, & qu'elles aient été reçuës par des officiers publics du lieu du départ, & enrégîtrées par-devant le principal officier public du lieu.

VI.

On n'aura pareillement égard aux paſſeports accordés par les puiſſances neutres ou alliées tant aux propriétaires qu'aux maîtres des bâtimens, ſujets des etats ennemis de Sa Majeſté, s'ils n'ont été naturaliſés, ou s'ils n'ont transféré leur domicile dans les etats des dites puiſſances, trois mois avant le 1 Septembre de la préſente année; & ne pourront les dits propriétaires & maîtres de bâtimens, ſujets des etats ennemis, qui auront obtenu les dites lettres de naturalité, jouïr de leur effet, ſi, depuis qu'elles ont été obtenuës, ils ſont retournés dans les etats ennemis de Sa Majeſté, pour y continuer leur commerce.

VII. Les

VII.

Les bâtimens de *fabrique ennemie*, ou qui auront eu un propriétaire ennemi, *ne pourront être reputés neutres* ou alliés, s'il n'eſt trouvé à bord quelques pièces authentiques paſſées devant des officiers publics, qui puiſſent en aſſurer la date, & qui juſtifient que la vente ou ceſſion en a été faite à quelqu'un des ſujets des puiſſances alliées ou neutres *avant le commencement des hoſtilités*, & ſi le dit acte tranſlatif de propriété de l'ennemi au ſujet neutre ou allié n'a été dûment enrégîtré par-devant le principal officier du lieu du départ, & ſigné du propriétaire ou du porteur de ſes pouvoirs.

VIII.

A l'égard des bâtimens de fabrique ennemie, qui auront été pris par les vaiſſeaux de Sa Majeſté, ceux de ſes alliés ou des ſes ſujets, pendant la guerre, & qui auront enſuite été vendus aux ſujets des etats alliés ou neutres, ils ne pourront être réputés de bonne priſe, s'il ſe trouve à bord des actes en bonne forme, paſſés par-devant les officiers publics à ce propoſés, juſtificatifs tant de la priſe que de la vente ou adjudication,

qui en auroit été faite enſuite aux ſujets des dits etats alliés ou neutres, ſoit en France, ſoit dans les ports des etats alliés; *faute deſquelles pièces juſtificatives*, tant de la priſe que de la vente, *les dits bâtimens ſeront de bonne priſe*.

IX.

Seront de bonne priſe tous bâtimens etrangers, ſur leſquels il y aura *un ſubrecargue* marchand, *commis* ou *officier-major* d'un pays *ennemi* de Sa Majeſté, ou dont *l'equipage* ſera compoſé au-delà *du tiers de matelôts ſujets* des etats ennemis de Sa Majeſté, ou qui n'auront pas à bord *le rôle d'equipage*, arrêté par les officiers publics des lieux neutres, d'où les bâtimens ſeront partis.

X.

N'entend S. M. comprendre dans les diſpoſitions du précédent article les navires, dont les capitaines ou les maîtres juſtifieront, par actes trouvé à bord, qu'ils ont été obligés de prendre les officiers-majors ou matelôts dans les ports où ils auront relâché, pour remplacer ceux du pays neutre,

neutre, qui ſeront morts dans le cours du voyage.

XI.

Veut S. M. que dans aucun cas *les pièces, qui pourroient être rapportées après la priſe des bâtimens, puiſſent faire aucune foi, ni être d'aucune* utilité, tant aux propriétaires des dits bâtimens qu'à ceux des marchandiſes, qui pourroient y avoir été chargées; voulant S. M. qu'en toutes occaſions *l'on n'ait égard qu'aux ſeules pièces trouvées à bord.*

XII.

Tous navires des puiſſances neutres, ſortis des ports du royaume, qui n'auront à bord d'autres denrées & marchandiſes, que celles qui y auront été chargées, & qui ſe trouveront munis de congés de l'Amiral de France, ne pourront être arrêtés par les armateurs François, ni ramenés par eux dans les ports du royaume, ſous quelque prétexte que ce puiſſe être.

XIII.

En cas de contravention, de la part des armateurs François, aux diſpoſitions du préſent règlement, il ſera fait main-levée des bâtimens & des marchandiſes, qui compoſent

ſent leur chargement, autres toutefois que celles ſujets à confiſcation ; & les dits armateurs ſeront condamnés en tels dommages & intérêts qu'il appartiendra.

XIV.

Ordonne S. M. que les diſpoſitions du preſent règlement auroient lieu pour les navires, qui auroient *échoué* ſur les côtes dépendantes de ſes poſſeſſions.

XV.

Veut au ſurplus S. M. que les diſpoſitions du titre *des priſes* de l'ordonnance de la marine du mois d'Août 1681, ſoient executées ſelon leur forme & teneur, en tout ce à quoi il n'aura pas été dérogé par le préſent règlement ; lequel ſera lu, publié & enrégîtré dans tous les ſiéges des amirautés. Mande & ordonne S. M. à M. le Duc de Penthièvre, Amiral de France, de tenir la main à ſon entière obſervation.

Fait à VERSAILLES
le 26 Juillet, 1778,
(Signé) LOUIS.
(& plus bas) DE SARTINE.

RÈGLEMENT

RÈGLEMENT *concernant les priſes faites ſur mer, & la navigation des vaiſſeaux neutres pendant la guerre, du* 21 *Octobre,* 1744.

DE PAR LE ROI.

LE Roi s'étant fait repréſenter le règlement du 23 Juillet, 1704, concernant les priſes faites en mer & la navigation des vaiſſeaux neutres & alliez pendant la guerre, Sa Majeſté auroit reconnu que les diſpoſitions de ce règlement étoient alors également ſages & convenables, & que même il ſeroit à deſirer pour le bien de ſon royaume, qu'elles pûſſent toutes être renouvellées pendant la préſente guerre : mais comme il en eſt pluſieurs qui ne ſçauroient s'accorder avec les traités & conventions qu'elle a faits avec les différentes puiſſances depuis ſon avénement à la couronne, & que Sa Majeſté s'eſt toûjours fait une loi d'obſerver ſes engagemens avec la fidélité la plus exacte, elle croit devoir faire céder ſes intérêts à la foi qu'elle doit aux traités. D'un autre côté Sa Majeſté ne pouvant pas douter que ſes ennemis ne ſe

ſervent

ſervent du pavillon & des paſſeports de quelques etats neutres, contre la volonté & les engagemens de ces mêmes etats ; & Sa Majeſté conſidérant que des conventions faites entre des Souverains, uniquement pour l'avantage & la ſûreté de leurs ſujets reſpectifs, ne peuvent avoir jamais eu pour objet de faciliter des fraudes dont le préjudice ne peut être douteux, elle *ſe croit d'autant* plus *fondée à empêcher ces fraudes*, qu'il n'eſt pas moins contre l'honneur & la dignité, que contre les intérêts des etats neutres, que des *ſujets* téméraires *compromettent leur* droit en *abuſant de leur pavillon & de leurs paſſeports*.

Dans ces circonſtances, Sa Majeſté a jugé à propos de rappeller dans le préſent règlement les diſpoſitions de celui de 1704, en diſtinguant celles qui ne doivent être exécutées qu'à l'égard des etats avec leſquels il n'a point été fait de conventions, d'y en ajoûter de nouvelles conformes aux traités qu'elle a faits avec d'autres etats, & d'y joindre même celles du règlement du 17 Février 1694, afin que ceux de ſes ſujets que armeront pour la courſe, ſoient pleinement informés des règles qu'ils doivent obſerver.

obſerver. Par ces conſidérations, Sa Majeſté a ordonné & ordonne ce qui ſuit.

ARTICLE PREMIER.

Fait Sa Majeſté défenſes aux armateurs François d'arrêter en mer & d'amener dans les ports de ſon royaume, les navires appartenans aux ſujets des Princes neutres, ſortis d'un des ports de leur domination, & chargés pour le compte des ſujets deſdits Princes neutres, de marchandiſes du crû ou fabrique de leur pays, pour les porter en droiture en quelque etat que ce ſoit, même en ceux avec qui Sa Majeſté eſt en guerre; pourvû néanmoins qu'il n'y ait ſur leſdits navires aucunes marchandiſes de contrebande.

II.

Leur fait pareillement défenſes d'arrêter les navires appartenans aux ſujets des Princes neutres, ſortis de quelque autre etat que ce ſoit; même de ceux avec leſquels Sa Majeſté eſt en guerre, & chargés pour le compte deſdits ſujets des Princes neutres, de marchandiſes qu'ils auront priſes dans le pays ou etat d'où ils ſeront partis,

pour s'en retourner en droiture dans un des ports de la domination de leur ſouverain.

III.

Comme auſſi leur fait défenſes d'arrêter les navires appartenans aux ſujets des Princes neutres, partis des ports d'un etat neutre ou allié de Sa Majeſté, pour s'en aller dans un autre etat pareillement neutre ou allié de Sa Majeſté ; pourvû qu'il ne ſoit pas chargé de *marchandiſes du crû* ou *fabrique de ſes ennemis*, auquel cas les marchandiſes *ſeront de bonne priſe*, & les navires relâchés.

IV.

Défend pareillement Sa Majeſté auxdits armateurs d'arrêter les navires appartenans aux ſujets deſdits Princes neutres, ſortis des ports d'un etat allié de Sa Majeſté ou neutre, pour aller dans un port d'un etat ennemi de Sa Majeſté ; pourvû qu'il n'y ait ſur ledit navire aucunes *marchandiſes* de contrebande, ni *du crû ou fabrique des* ennemis de Sa Majeſté ; *dans lequel* cas leſdites marchandiſes ſeront de bonne priſe, & les navires ſeront relâchés.

V. Si

V.

Si dans les cas expliqués par les articles I, II, III, IV de ce règlement, il ſe trouvoit ſur leſdits navires neutres, de quelque nation qu'ils fuſſent, des marchandiſes ou effets appartenans aux ennemis de Sa Majeſté, les marchandiſes ou effets ſeront de bonne priſe, quand même elles ne ſeroient pas de fabrique du pays ennemi, & néanmoins les navires relâchés.

VI.

Veut Sa Majeſté que tous vaiſſeaux pris, de quelque nation qu'ils ſoient, ennemie, neutre ou alliée, deſquels il ſera conſtaté qu'il y a eu des papiers jettés à la mer, ſoient déclarés de bonne priſe, avec leur cargaiſon, ſur la ſeule preuve conſtante des papiers jettés à la mer, & ſans qu'il ſoit beſoin d'examiner quels étoient ces papiers, par qui ils ont été jettés, ni s'il en eſt reſté ſuffiſamment à bord pour juſtifier que le navire & ſon chargement appartiennent à des amis ou alliés.

VII.

On n'aura aucun égard aux paſſeports des Princes neutres, auxquels ceux qui les auront

ront obtenus ſe trouveront avoir contrevenu, & les vaiſſeaux qui navigueront ſur leſdits paſſeports, ſeront déclarés de bonne priſe.

VIII.

Un paſſeport ou congé ne pourra ſervir que pour un ſeul voyage, & ſera conſidéré comme nul, s'il eſt prouvé que le navire pour lequel il auroit été expédié, n'étoit, lors de l'expédition, dans aucun des ports du Prince qui l'a accordé.

IX.

Tous connoiſſemens trouvés à bord non ſignés, ſeront nuls, & regardés comme actes informes.

X.

Tout navire qui ſera *de fabrique ennemie*, ou qui auroit eu un propriétaire ennemi, ne pourra être cenſé neutre ni allié, s'il n'eſt trouvé à bord quelques pièces authentiques paſſées devant les officiers publics, qui puiſſent en aſſurer la date, qui juſtifient que *la vente* ou *ceſſion* en a été faite à quelqu'un des ſujets des puiſſances alliées ou neutres, *avant la déclaration de guerre*, & ſi ledit acte tranſlatif de propriété de l'ennemi

nemi au ſujet neutre ou allié, n'a été dûement enregiſtré devant le principal officier du lieu du départ, & n'eſt ſoûtenu d'un pouvoir authentique donné par le propriétaire, dans le cas où il n'auroit pas fait lui-même ladite dernière vente. A l'égard des navires de fabrique ennemie qui auront été pris par nos vaiſſeaux, ceux de nos alliés & de nos ſujets pendant la préſente guerre, & qui auroient enſuite été vendus aux ſujets des etats alliés ou neutres, ils ne pourront être réputés de bonne priſe s'il ſe trouve à bord des actes en bonne forme, paſſés par des officiers publics à ce prépoſés, juſtificatifs, tant de la priſe que de la vente ou adjudication qui en auroit été faite enſuite aux ſujets deſdits etats alliés ou neutres, ſoit en France, ſoit dans les ports de nos alliés; faute deſquelles pièces juſtificatives, tant de la priſe que de la vente, leſdits navires ſeront de bonne priſe, ſans que dans aucun cas les pièces qui pourroient être rapportées par la ſuite, puiſſent faire aucune foi ni être d'aucune utilité, tant au propriétaire deſdits navires, qu'à ceux des marchandiſes qui pourroient y avoir été chargées.

XI. On

XI.

On n'aura aucun égard aux paſſeports accordés par les Princes neutres ou alliés, tant aux propriétaires qu'aux maîtres des navires ſujets des etats ennemis de Sa Majeſté, s'ils n'ont été naturaliſés, & n'ont transféré leur domicile dans les etats deſdits Princes, avant la déclaration de la préſente guerre : ne pourront pareillement leſdits propriétaires & maîtres des navires ou ſujets des etats ennemis, qui auront obtenu leſdites lettres de naturalité, jouir de leur effet, ſi depuis qu'elles ont été obtenues ils ſont retournés dans les etats ennemis de Sa Majeſté, pour y continuer leur commerce.

XII.

Seront de bonne priſe tous navires étrangers ſur leſquels il y aura un ſubrecargue, marchand, commis ou officier-marinier d'un pays ennemi de Sa Majeſté, ou dont l'équipage ſera compoſé au-delà du tiers de matelots ſujets des etats ennemis de Sa Majeſté, ou qui n'auront pas à bord le rôle de l'équipage, arrêté par les officiers publics des lieux neutres d'où les navires ſeront partis.

XIII. N'entendons

XIII.

N'entendons comprendre dans la diſpoſition du précédent article, les navires dont les capitaines ou les maîtres juſtifient par actes trouvés à bord, qu'ils ont été obligés de prendre des officiers-mariniers ou matelots dans les ports où ils auront relâché, pour remplacer ceux du pays neutre, morts dans le cours de leur voyage.

XIV.

Les navires appartenans aux ſujets du Roi de Dannemarck, & ceux appartenans aux ſujets des Etats Généraux des Provinces-unies, pourront naviguer librement pendant la préſente guerre, ſoit de leurs ports à des ports d'autres etats neutres ou ennemis, ou d'un port neutre à un port ennemi, ou d'un port ennemi à un autre port ennemi, pourvû que ce ne ſoit pas à une place bloquée, & que dans ces deux derniers cas ils ne ſoient pas chargés en tout ou en partie, de marchandiſes réputées de contrebande par les traités, & ce nonobſtant ce qui eſt porté par les quatre premiers articles du préſent règlement, duquel *néanmoins les articles* VI, VII, VIII, IX, X, XI & XII,

ſeront

ſeront exécutés à leur égard: & dans le cas qu'ils ſe trouveroient chargés en tout ou partie deſdites marchandiſes de contrebande, allant à un port ennemi, ſoit qu'ils fuſſent partis d'un autre port ennemi ou d'un port neutre, leſdites marchandiſes ſeront de bonne priſe, ſans que les navires & le ſurplus de leur cargaiſon, ni leurs biens & effets puiſſent être retenus, quand même ils appartiendroient aux ennemis.

XV.

Il en ſera uſé de même à l'égard des navires appartenans aux ſujets du Roi de Suéde, & de ceux appartenans aux habitans des villes Anſéatiques, dans leſquels néanmoins toutes marchandiſes ſans diſtinction, appartenantes aux ennemis, quand même elles ne ſeroient pas de contrebande, ſeront de bonne priſe ; ſans toutefois que les navires & le ſurplus de leur cargaiſon, ni leurs autres biens & effets puiſſent être retenus.

XVI.

Tous navires ſortis des ports du royaume, qui n'auront à bord d'autres denrées & marchandiſes que celles qu'ils y auront chargées,

& qui ſe trouveront munis de congés de l'Amiral de France, ne pourront être arrêtés par les armateurs François, ni ramenés par eux dans les ports du royaume, ſous quelque prétexte que ce puiſſe être.

XVII.

En cas de contravention par les armateurs François aux défenſes à eux faites par le préſent règlement, veut Sa Majeſté qu'il ſoit fait main-levée aux ſujets des Princes neutres, des navires à eux appartenans, & des marchandiſes du chargement, dans les cas où elles ne ſeroient pas ſujettes à confiſcation, & que leſdits armateurs ſoient condamnés en leurs dommages & intérêts.

XVIII.

Veut au ſurplus Sa Majeſté que le titre des priſes de l'ordonnance de la marine du mois d'Août 1681, ſoit exécuté ſuivant ſa forme & teneur, en ce qui n'y eſt dérogé par le préſent règlement. Mande & ordonne Sa Majeſté à Monſ. le Duc de Penthièvre Amiral de France, de tenir la main à ſon exécution, & aux officiers de l'Amirauté de le faire publier, afficher & enre-

giſtrer par-tout où beſoin ſera, à ce que nul n'en ignore. Fait au camp devant Fribourg, le vingt-un Octobre, mil ſept cent & quarante-quatre.

Signé LOUIS.

Et plus bas, PHELYPEAUX.

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London: Printed by G. Cooke, Dunſtan's Hill, Tower-Street.

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